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ABSTRACT

This report indicates to principals that their schools probably have a marihuana problem; outlines measures necessary to the establishment of an effective marihuana prevention program; and suggests ways to handle the marihuana smoker once he has been identified. To help the principal focus upon, understand, and take constructive action with respect to the marihuana problem, the report first attempts to educate the large number of high school principals who assume that no marihuana problems exist in their schools. It then outlines the necessary foundations on which the principal and others should construct a program designed to meet the needs of a particular school and community. Finally, the policy formation and its implementation and the role of the principal in a situation involving a student who has been caught with marihuana are dealt with. This last section emphasizes the legal responsibilities of the principal and the various ways in which he can exercise good judgment in the decisionmaking process without forfeiting his legal duties. Appendixes contain texts of federal drug laws; a State-by-State survey of marihuana laws and penalties; and guidelines for establishing a school board policy on drug discovery. (JF)

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THE HIGH SCHOOL PRINCIPAL'S ROLE WITH RESPECT TO THE PRESENT MARIHUANA PROBLEM

by

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INTRODUCTION

The object of this report is to describe the principal's role with respect to marihuana use and abuse by students in high school. Although this report is aimed primarily at marihuana use, other drugs are mentioned only to the extent that they too enter into the picture of what is called the present "drug problem". Furthermore, this report is not recommended to the entire body of school personnel who may be seeking suggestions for an all-encompassing drug program but rather to secondary school principals who are concerned about student marihuana use.

Marihuana usage is focused upon here as national statistics indicate that this drug is the most popular among students. The secondary level is generally the area of concern here as it appears that it is during these years that most students decide whether or not to use marihuana. The principal is chosen as he is gradually being given greater and greater responsibility for formulating and implementing drug programs and policies within his particular school. His role, then, is truly a crucial one if any significant degree of control is to be gained over this controversial and disturbing problem.

To help the principal focus upon, to understand, and to take constructive action with respect to the marihuana problem, this report has been divided into three sections. The first part is aimed at the alarming number of high school principals who assume that there exists no marihuana problem in their schools. Many of these administrators simply have poor educational vision.

The second section is aimed at describing measures to prevent marihuana use at the high school level. This section is not a general description of the kinds of activities that need to be incorporated into a drug education program; that information is available in recent journals, government reports, state board recommendations, local board program outlines, and elsewhere. Part II simply outlines the necessary foundations upon which the principal and others should construct a program designed to meet the needs of a particular school and community.

Part III is an attempt to deal with policy formation and implementation concerning a student who has been caught with or using marihuana. Although there is an abundance of material concerning preventive programs, there is presently a considerable lack of material concerning the issue of what is to be done once a student has been identified as a marihuana user. To help fill this gap, this report relies heavily upon the legal responsibilities of the principal and the various ways in which he can implement good judgement into the decision-making process without forfeiting his legal duties.

In a nutshell, then, this report is intended to indicate to principals that their schools may very well have a marihuana problem. In addition, the report suggests certain measures necessary to the establishment of an effective marihuana prevention program. Finally, it suggests ways in which to handle the marihuana smoker once he has been identified.

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PART I "WHAT MAKES YOU THINK THAT MY SCHOOL HAS A MARIHUANA PROBLEM?"

Before any principal is able to assume the role of an educational leader, he must have the ability to comprehend and interpret his environment, specifically his school and community. Too often, principals brush off the marihuana issue by saying that marihuana is an evil which is elsewhere. "There's no real problem here in my school. We don't have any drug users. My kids are good kids."

A. Use of Marihuana vs. Other Drugs

Many principals fail to understand that marihuana smokers are not just the youngsters in the ghetto or those with deep psychological disturbances. Although use of the more potent drugs such as morphine, heroin, LSD, and others appears to be generally restricted to certain socio-economic groups, marihuana is found everywhere in anybody's pocket.

> I have been horrified as I have gone around this country talking to high school principals...to have them tell me that drugs aren't a problem in their schools...I am convinced that there is no school district in the United States - whether of 400 or 100,000 students - where drugs are not present.[1]

There are several factors which account for this incredible failure on the part of many principals to see a marihuana problem in their schools. Generally these factors could be classified under two headings, the cognitive factors and the affective factors. The heading cognitive factors means that many principals are intellectually ignorant about marihuana. They don't know the correct facts and figures. Affective factors mean that certain principals, regardless of whether or not

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[1] Art Linkletter, "How School Principals Can Fight Drug Abuse", National Association of Secondary School Principals Bulletin, Vol. 55, No. 355 (May, 1971), pp. 16-17

they understand the facts and figures about marihuana, cannot accept the threatening possibility that some of their students might be using it. Such principals believe that marihuana users are juvenile delinquents who will never amount to much.

B. Cognitive Factors

This report does not focus on the physiological or psychological impact that marihuana potentially has on the user as that information is readily available from any one of several government agencies .[2] The focus here is upon several interesting findings concerning marihuana users which factually refute several beliefs that many high school principals undoubtedly have.

1. How Many?

Some estimates claim that eight to 12 million people have used or are using marihuana in the United States.[3] Others claim that the number of users runs as high as 20 million.[4] However these figures are often misleading as they do not tell us about marihuana use by any specific group of individuals such as our high school population. In addition, such surveys were often hastily planned and carried out with the objective being to shock Americans into believing that practically everyone smokes marihuana.

The most accurate estimate of how many high school students use or have used marihuana was established only about 21 months ago by the

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2 For example, the reader may wish to write the National Clearing House for Drug Abuse Information, P.O. Box 1701, Washington, D.C. 20013

3 Linkletter, op. cit., p. 15

4 Frank M. Ochberg, "Drug Problems and the High School Principal", National Association of Secondary School Principals Bulletin, Vol. 54, No. 346 (May, 1970), p. 55

Bureau of Narcotics and Dangerous Drugs. The results of their survey are pictured below in Table 1.[5]

Table 1. National Estimate of H.S. Students Having Used Marihuana One or More Times

	Percent			Number (millions)		
Group	Total	Male	Female	Total	Male	Female
Grades 9-12	22	25	20	3.26	1.82	1.44

An obvious indication of this survey is that if one out of every four or five students has used or is using marihuana, we are not talking about a small minority of youngsters. Due to the size of this group, it is quite possible that many schools, if not most, have a certain number of students who have had marihuana experiences. A second significant implication to be drawn from this survey is that the belief that most marihuana smokers are male is invalid. One may assume that most principals who claim that their schools are nearly immune from marihuana users think more often of male smokers than of female smokers.

Principals must also realize that this considerable number of student marihuana users is not a stagnant figure. It has risen sharply and appears to be continually rising. For example, the number of marihuana arrests made by the United States Bureau of Customs in reaction to the increase of marihuana use rose 362% from 1965 to 1970.[6] Arrests made by the Bureau of Narcotics and Dangerous Drugs, an organization

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5 William H. McGlothlin, Marihuana: An Analysis of Use, Distribution, and Control, U.S. Department of Justice, Bureau of Narcotics and Dangerous Drugs (Washington: Government Printing Office, 1971), p. 10

6 National Commission on Marihuana and Drug Abuse, Marihuana: A Signal of Misunderstanding (Washington: Government Printing Office, 1972), p. 106

concerned primarily with sale rather than use, rose 80% from 1965 to 1968.[7] Perhaps most astounding is the fact that arrests made at the state level increased 1000% from 1965 to 1970.[8] Surely a principal would be foolish to assume that the marihuana problem is "working itself out".

2. Isn't Marihuana Confined to Urban Schools?

Despite the fact that millions of high school students have used or are using marihuana and that this number appears to be rising, many principals would say "so what? What does that have to do with my school? We're not in a ghetto and we don't have major disciplinary problems."

Here again is another fallacy. The following table serves to demonstrate this fact.[9]

Table 2. Type Community and Marihuana Use (Florida High School Seniors)

	Percentage Marihuana Users
Large City (250,000)	17%
Medium (25,000-50,000)	14%
Small (<25,000)	9%
Rural	8%

These figures would then indicate that marihuana use is not something which occurs only "downtown". It is also quite prevalent in suburban areas and exists to a certain extent in most small and rural areas.

7 ibid.

8 ibid.

9 National Commission on Marihuana and Drug Abuse, Marihuana: A Signal of Misunderstanding, Appendix, Vol. 1 (Washington: Government Printing Office, 1972), p. 290

3. Aren't Most of the Smokers "Poor Kids"?

Another foolish assumption is that only students of low income families smoke marihuana. Examine the following table.[10]

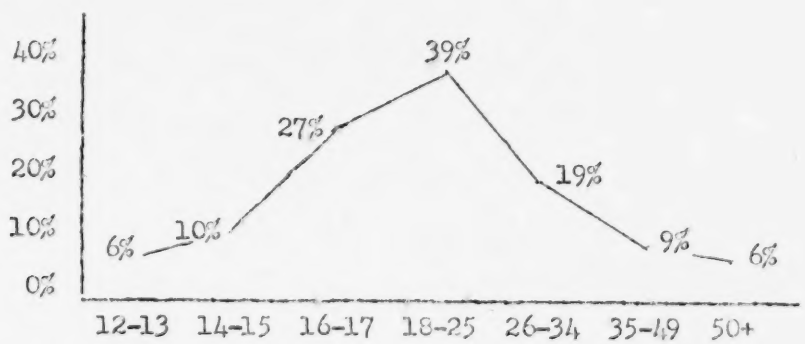
Table 3. Family Income and Marihuana Experience Among Florida High School Students (N = 911)

Family Income	Non-users	Users	Totals
Less than $4,000	91%	9%	100%
$4,000 to $7,999	88%	12%	100%
$8,000 to $11,999	88%	12%	100%
More than $12,000	80%	20%	100%

4. Isn't Marihuana a College Problem?

Although many surveys reveal that marihuana is used to a considerable degree at the college level,[11] an important question remains. When do students start? The answer, generally, is in high school. The following chart displays this dramatic increase during the secondary years.[12]

Figure 1. Marihuana Experience by Age



10 ibid., p. 296
11 ibid., pp. 283-4
12 ibid., p. 284

5. But We Don't Have Any "Pushers" In My School.

This last belief is equally pathetic. The reason why this is placed last among the cognitive factors which affect the principal's awareness is that it borders on the affective factors; namely, kids get marihuana in a dark alley from some hippie.

Before turning to the affective factors, however, examine briefly the following table.[13]

Table 4. How Marihuana Was Obtained the First Time It Was Used by Youth (under 18)

How Obtained	Percent
Bought it	5.1%
It was given to me	78.5%
Other way	7.0%
No answer	9.8%

As pushers usually sell, a reasonable assumption to be drawn from Table 4 is that students obtain marihuana from close friends free of charge. This assumption has been substantiated by further research.[14]

What then do these recent findings tell high school principals?

1. A significant number of students have used or are using marihuana.

2. Marihuana is not simply a "downtown" problem.

3. Students who use marihuana represent all economic levels, not just the lower income group.

4. Students generally begin using marihuana in high school.

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13 ibid., p. 279
14 ibid., p. 280

5. Marihuana users in high school are not generally supplied by pushers.

Thomas Shannon, addressing the San Diego State College Drug Abuse Workshop on the school's legal position, stated:

> We are dismayed over reports from the probation department and the schools detailing not only the great number of kids involved in drugs or narcotics violations, but also giving evidence that there is no clear pattern of family background, neighborhood environment or economic status.[15]

In fact, one could argue more strongly and state that marihuana smokers by and large are those who come from the wealthier families.

> Most of today's users are from better than average homes, have higher than average intelligence, and have money.[16]

However, regardless of whether principals feel that drugs are limited to use by the rich or poor, the intelligent or the less intelligent, research substantiates the fact that marihuana users are everywhere. In this regard, marihuana use is unique:

> Even the kids are scared of LSD. But they are not scared of marihuana. More and more are trying it; more and more are using it.[17]

It is here that we encounter the most difficult factor which affects a principal's willingness to recognize and deal with the marihuana problem - his values. All the facts which abound in national and local research projects are of little value if the principal does not believe them.

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15 Thomas A. Shannon, "Legal Position of School Personnel - Drugs and Narcotics" (paper presented at the San Diego State College Drug Abuse Workshop, August 12-23, 1968, San Diego, Calif.), ERIC Doc. No. ED 042 265, p. 1

16 Robert Elliott, "Narcotics: A Crucial Area of Secondary School Responsibility", Education Digest, Vol. XXXVI, No. 1 (Sept., 1970), p. 44

17 Linkletter, op. cit., p. 17

C. Affective Factors

1. Principal's Values

A recent newspaper article discussed a well known New York doctor who gave many of his patients drugs which supposedly increased their work potential. Because some of these patients were nationally known, the article claimed that this story was

> ...far from the typical picture of rag-tag youths dosing themselves with illegally obtained drugs.[18]

Unfortunately many Americans, high school principals included, associate drug users with criminals, hippies, long hair, and the riffraff from society. Although the presentation of data refutes many of these assumptions, principals need more than facts. They must be willing to change their beliefs on the basis of these facts. They must be willing to temper their value judgements.

Once a principal has the facts and the myth surrounding the misnamed "killer weed" has been reduced, he must

> ...understand that a youngster who has experimented with drugs is not necessarily degenerate or unstable, but perhaps merely a normal, well adjusted youngster who is responding to the pressures of his environment in a way which is completely understandable.[19]

In order to reach this understanding about students who use marihuana, principals need to

> ...analyze their views regarding different life styles and the all too common tendency to overreact and generalize about all young people who think and act in untraditional ways...Common myths - such as all unkempt people with long hair are drug addicts, or that those who inhabit communes all use narcotics - need to be examined.[20]

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18 Richmond Times-Dispatch (Virginia), Dec. 4, 1972, Sec. 1, p. 1, col. 8

19 Harvey Singer, "The School Counselor and the Drug Problem", High School Journal, Vol. LIV, No. 8 (May, 1971), p. 497

20 James J. Van Patten, "Education in Relation to Drug Use and Abuse", School and Community, Vol. 100, No. 2340 (March, 1972), p. 182

It is very difficult to determine precisely why some principals who have the facts fail to see the full implications and urgency of the marihuana issue. Many of them see the issue as a national problem but fail to recognize the fact that it could also be a local problem. Perhaps much of their lack of ability to comprehend the issue is undoubtedly based on their lack of ability to understand those who use marihuana. What probably prohibits this understanding is a value barrier which blocks any real, sincere effort to explore that which appears to be alien and possibly threatening, namely, young marihuana users. The challenges made by young people to tradition can be frightening as well as exciting.

Art Linkletter, who has been fighting this drug problem especially hard since the death of his daughter due to drugs, recently pointed out what happened to him when he pushed aside his values long enough to take a good hard look at young drug users:

> And then I discovered the most fundamental fact about the drug world; that is, the pushers are your children and my children. Not sinister, underground, characters lurking in alleys, but short-haired, clean-looking, bright-eyed boys and girls who have become influenced by drugs and have become pushers...They are not criminals, I discovered, but patients. They are victims.[21]

To discover that which Linkletter described is unfortunately not simply a matter of casually looking. It involves the commitment and the desire on the part of the looker to see and to understand. A principal must want to see what is to be seen; otherwise, it will appear not to be there. This "discovery", therefore, is not like stumbling upon a lost gold mine. Assessing and altering values is a difficult and delicate process which can only begin internally.

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21 Linkletter, op. cit., p. 14

2. Values of Those within the School

Once the principal has realistically realigned his beliefs about young marihuana users, he must then determine what the values are of his superintendent, the local school board, the faculty, and the students. Even the most open-minded, democratic principal will soon encounter serious opposition from "above and below" if those operating within the school do not share the same opinions about marihuana users.

If the principal finds that any segment of those who directly affect the school believes, for example, that marihuana necessarily leads to LSD, that their school has no drug problem, or that offenders caught smoking marihuana should be hanged in the town square, this principal will know who is in need of facts. After these facts have been presented and discussed, unjust values and biases will come under question and undergo alteration. It should be noted that the principal is not expected to act alone in assessing the school climate with respect to marihuana use. It is not a case of St. George being the only one willing or able to slay the dragon. Assistance should be recruited both from within and outside the school.

3. Values of Those outside the School

Once a realistic and honest picture within the school has been established concerning marihuana and its users, the principal will need to lead some sort of value assessment team into the community in order to obtain an accurate description of how the general surrounding public views the marihuana issue. Again, principals are likely to encounter some resistance.

In a recent study of a predominantly black, inner-city high school,

the evaluative report claimed the following:

> ...parents refuse to acknowledge that their children may be involved...It will be the other guy who gets hooked.[22]

The point that the principal must stress here is that the school is not storming the community in search of possible marihuana users. The school is not out to "get" anybody. Instead, it is seeking to increase understanding and cooperation in order to deal more effectively with a very serious problem. This problem is neither simply the community's nor the school's. It is their problem.

Once a mutual understanding about marihuana and its users has been established between the school and community, the general concern for marihuana users on a national level must be brought down to the specific case of marihuana users in the local school area. To do this, the principal must assess the extent of the marihuana problem in and around his particular school. Just as his effective leadership will keep communication lines open and promote mutual trust within the school and between the school and the community, his apathy or failure to admit any marihuana problem will cut the school off from the community and increase the potential danger of misinformation and gossip about marihuana.

D. Assessment of the Local Problem

Among other questions, the principal assisted by a representative committee needs to ask the following:

What percentage of the student population has used marihuana?

What percentage used it only once?

What percentage used it more than once but less than 10 times?

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22 "Drugs and the Schools: Two Case Studies", Educational Product Report, Vol 3, No. 7 (April, 1970), p. 5

What percentage use it monthly? weekly? daily?

When did students begin using marihuana?

Who introduced them to it?

Where is marihuana now obtained? From whom?

What percentage has not yet tried marihuana but intends to?

What percentage will never try marihuana?

Why do students in this community use marihuana?

Is marihuana smoked on school grounds?

Is marihuana exchanged on school grounds?

How effective is the present drug education program (if there is one)?

How effective is the present school marihuana policy (if there is one)?

Although there are many other questions which will naturally arise, these 14 provide initial information concerning the extent of the local marihuana problem. They also provide initial foundations upon which the school and community could build an effective drug education program and develop an effective school policy on marihuana and other drugs.

Naturally, it would be wise for the principal to determine the extent of the marihuana problem outside of his school as well as within it. He should also investigate therefore the other schools in the area, both public and private, elementary as well as secondary. He would also be wise to include in his investigation any neighboring universities and colleges, as well as any prominent youth organizations such as Scouts and church fellowship groups. In addition, he should talk with local medical authorities and the local law enforcement agency. In sum, he must obtain a complete picture of the marihuana picture in his area.

With the local marihuana picture in mind, the principal then needs to consider two courses of action. The first is to help establish a preventive drug education program tailored to meet the specific needs of his school and community. The second is to help formulate a policy to be used as a guideline once a student has been reported as a marihuana user.

PART II MEASURES TO PREVENT ANTICIPATED MARIHUANA USE: DRUG EDUCATION

In the past decade one has witnessed a variety of drug education programs which are based on the assumption that drug use must be stopped before it begins. Even though principals might hear of occasional use of marihuana by particular students, most principals feel that the value of drug education lies in its ability to dissuade possible future users. The Dean of Students at California State College at Long Beach recently stated the following:

> Obviously we must deal not merely with individuals who are presently using and abusing but also with potential users, persons who may have a propensity for such experiences. Our concern should be with prevention as well as cure.[23]

To meet this need, many schools have some sort of what they call drug education. Perhaps they have a few colorful pamphlets or a couple of movies; perhaps they've had a guest speaker come in or perhaps the school nurse has been officially designated as the person with whom to speak when a drug problem or question arises. However, if mathematics were taught in a similar fashion, it is doubtful if many would call it math education. The point is that most drug education programs are

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23 George D. Demos, "Drug Abuse and the New Generation", Phi Delta Kappan, Vol. L, No. 4 (Dec., 1968), p. 215

insufficient, sensational, and sporatic. The proof of their ineffectiveness lies in the fact that marihuana use has increased among students.

Even to those schools who have a so-called drug education program is recommended what is outlined in Part I, namely, the assessment of school and community values with regard to marihuana users and the assessment of the local use of marihuana.

There are two criteria which are essential at the outset of any drug education program. Many programs have failed, or are failing, simply because these two necessary conditions have not been satisfactorily met. The conditions are the creation of an open climate and credibility.

A. Open Climate

An open climate is a condition which must be consciously strived for not only in drug education but in all facets of school-community life. Even if the most adequate drug education program exists in a school, it will never be effective unless those parties involved feel free to communicate with each other and to share possibly shocking ideas and opinions. When I mention open climate, I do not mean simply that a school is open if students are permitted to chat in the halls between classes. An open climate suggests that channels of communication be open to all affected by the school: school boards, superintendents, principals, teachers, students, the community, medical authorities, legal agencies, and other formal and informal groups.

A recent survey was conducted at a Maryland high school approximately 15 miles from Washington. From this predominantly white, middle class high school of 3,000 students, 432 randomly selected male and female ninth to eleventh graders were asked several questions regarding their

drug education program.[24] One of the questions was the following:

> If you ever have a problem or a question concerning drugs or drug use, how free would you feel about going to any of the following types of people to talk about your problem: school nurse, teacher, vice-principal, parent, friend?[25]

Responses were tabulated under "very free", "so-so", and "not very free". The "friend" was naturally the most popular choice for the person with whom another student would speak. The "vice-principal", however, received 63% of the "not very free" vote. Many people would reply that this is quite natural as the vice-principal or principal is a very busy man who doesn't have time to concern himself directly with student problems. He'd like to but he has other more pressing responsibilities. This is truly unfortunate. The principal is in an extremely important position as it is he who is largely responsible for the quality of teaching and learning which occurs in his school. As many students undoubtedly feel that principals are too distant to be concerned with student problems, it is imperative that principals begin to assume the role of the educational leader which means, among other things, that they try to establish an open climate between themselves and the students. This involves more than saying "hello" in the supermarket.

John Langer of the Bureau of Narcotics and Dangerous Drugs stated the difficulty of opening lines of communication as follows:

> There seems to be a implicit pact among students and teachers that if you don't talk about the problem to each other, each can go on pretending that the other doesn't know it exists. Of course, teachers talk about it to each other, and students talk about it to each other, but somehow, communication between students and teachers on this topic is limited.[26]

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24 Joseph P. Zima and Gene A. Smith, "High School Students, Drugs, and Teachers", School and Society, Vol. 99, No. 2333 (April, 1971), pp. 250-3

25 ibid., pp. 250-1

26 John H. Langer, " School-Law Enforcement Cooperation", Guidelines for Drug Abuse Prevention Education, U.S. Department of Justice, Bureau of Narcotics and Dangerous Drugs (Washington: Government Printing Office, 1970), pp. 14-15

This conversation barrier of which Langer speaks is naturally not limited to teachers and students. It is something behind which the principal may also hide. His role here, as in the local value and problem assessment function, is again one of the initiator. He must attempt to break down these barriers of communication and set an example of openness within his school and community. It would be extremely difficult to imagine a school that enjoyed an open climate with a principal who refused to talk about marihuana or who saw it as only a minor problem of some small minority.

B. Credibility

An open climate is not sufficient by itself for the formation of an effective drug education program. For example, there are many principals whose door is always open to teachers, parents, or students. These administrators encourage open discussion in order to see who stands where on a topic and give school and community members the feeling that they have a voice in the future of their schools. However, when the time arrives for a decision to be made, these principals retire to their office to decide alone. In other words, they feel that their decision will naturally be better than anyone else's. "After all", they think, "that's what I'm paid to do."

The major problem here lies not in the lack of an open climate but rather in the fact that the principal doesn't truly believe in his fellow men. Somehow, he was born to be the leader and leaders inherently make better decisions than followers.[27]

The key word then is credibility. An open climate which lacks

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27 for an excellent description of this type of principal see Thomas J. Sergiovanni and Robert J. Starratt, Emerging Patterns of Supervision: Human Perspectives, (New York: McGraw-Hill Book Company,1971), pp. 94-95

credibility is nothing more than a front for a system where everyone is free to communicate as long as the principal doesn't hear about it.

> Let us influence the young by being authentic, open, trusting, and honest. Let us stand up, speak out, be ourselves, and listen.[28]

The basis of credibility is fact not feeling. Drug education programs which were initiated by a film strip which showed marihuana users suffering among the garbage cans in the alley won't do the trick. In fact, such scare tactics often have the reverse effect. Often,

> ...because the kids were given misinformation about the harmfulness of marihuana, they have gone to the other extreme in saying it has no harmful effects at all - an allegation which is not true, according to recent findings.[29]

It must be noted here, however, that many principals are doing their utmost to establish an open climate and the conditions of credibility. They have faith in their fellow men and believe in what they say. Nevertheless, much of what is said about marihuana is completely false.

> A good example of the misinformation so prevalent about drugs can be found in the Encyclopedia Britannica, latest edition, regarding marihuana. Look at it. There are at least a half-dozen errors in this statement alone.[30]

Therefore the principal needs to disseminate the facts in order to create credibility. He must also believe in his fellow men in order to maintain this credibility and to create an open climate.

C. Bases of the Program

Necessary stages to any successful program are planning, implementation, and evaluation. Far too often when principals finally acknowledge that

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28 Demos, loc. cit.
29 Linkletter, op. cit., p. 17
30 Demos, op. cit., p. 216

a program is needed,

> ...it is often because of some sensational incident...which causes community panic and leads in turn to the initiation of ad hoc programs which, hastily conceived and put into action, can do little more than employ scare tactics in an effort to dissuade students from using drugs.[31]

Careful planning, then, is the first important step towards the establishment of an effective program. Here the role of the principal is not one of planner but of coordinator. His concern is not to formulate the program by himself but to involve the members of the school and community in selecting the objectives of the program and the means to achieve those objectives. His concern is one of seeing that the best possible program is implemented, not that his personal ideas are translated into policy.[32]

Although this report does not suggest specific materials as these would vary from school to school, the list below enumerates seven common bases to be used as a guideline in the formulation of objectives.

1. Facts

Primary consideration must be given to discussion of facts.

> Few issues are so steeped in fallacy, so highly charged by emotional response, and so symbolic of the generation as this one...Too often, I find, both sides of the generation gap are reluctant to let facts interfere with opinions when it comes to discussing the effects of these substances.[33]

Therefore, rumors and shouting provide very unstable grounds upon which to build an effective program.

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31 "Drugs and the Schools: Two Case Studies", op. cit., p. 4

32 A suggested place for a principal to initiate planning would be at the level of local assessment as outlines in Part I.

33 Lloyd Needs, "Education: Key to the Drug Problem", Social Education, Vol. 33, No. 6 (Oct., 1969), p. 664

2. Use vs. Abuse

The principal should ensure that the word "abuse" is not coupled as the natural partner with marihuana. Distinction needs to be made between the occasional use of marihuana and abuse. This determination of what is use and abuse must be made on factual information. The word "use", incidentally, should not connote the idea that what is used is harmless. Both terms indicate potential danger; they differ only in degree of harm.

3. Motivational Factors

In a recent article, Robert Elliott pointed out that drug education should "emphasize people, not drugs."[34] What Elliott means is that far too many programs are presented completely objectively, coldly, and factually. In addition to the facts and the distinction between use and abuse one needs a close personal examination of the reasons why a student chooses to use or not to use marihuana in the first place.

> The current crisis involving drugs illustrates how unsuccessful schools are in assisting students to integrate facts and values. Students have been overwhelmed with facts about drugs and drug usage. For decades, states have required high schools to disseminate information on drugs, alcohol, and tobacco. But the result is simply an increase in experimentation and use.[35]

Therefore, the following must be included in the school's program:

1. the mood of the individual (joyous, depressed, angry, etc.)
2. the motivation of the smoker (to tranquilize, to become happier, to become more outgoing, to have sexual relationships, etc.)
3. the environment (setting) in which the individual finds or places himself.[36]

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34 Elliott, op. cit., p. 46

35 Samuel S. Shermis, "Educational Overview", Educational Product Report, Vol. 3, No. 7 (April, 1970), p. 28

36 Donald J. Wolk, "Youth and Drugs", Social Education, Vol. 33, No. 6 (Oct., 1969), p. 669

4. Decision Making

The entire area of helping individuals to make sound decisions must also be another related focus of the drug education program:

> The task is ...to educate, not about the evils of heroin, marihuana, LSD, and the dangers of specific stimulants and depressants, but about people...We must help young people to make informed decisions on the basis of broad general principles.[37]

The principal has the tremendous opportunity here to share with students, teachers, and others a wealth of good and bad decisions.

5. Laws

Included in any drug education program must be the position of the legal structure with respect to marihuana use. All those involved with the school should have a general understanding of the federal and state laws in addition to any state and/or local policies.

However, it is not suggested that the laws be presented as cold facts of life. Instead, students should participate in investigations of why laws are made, how, and what their pruposes are. This is another area which the schools have treated only lightly. Simply mentioning the Declaration of Independence or the Social Security Act is not sufficient.

In addition, the principal should make clear the particular school's policy (if there is one) on the use of marihuana. He should explain his position and the philosophy upon which the policy is based. He should also invite constructive criticism and recommendations for revision if the policy has proven to be ineffective or rigid.

6. Larger Social Problem

Any discussion involving marihuana is bound to open the door to

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[37] ibid., pp. 666-8

discussing the larger problem of using alcohol, tobacco, coffee, sleeping pills, and countless other accepted household drugs. Unfortunately it is often here where the school population splits into the younger and the older generations. Accusations from students such as "You are all hypocrits when you tell me to stay away from marihuana and you drink gin" are not uncommon. Nor are counter arguments from the adults such as "You are too young to understand what I'm talking about." As Lloyd Meeds stated several years ago, there is no getting around the fact that

> there is an element in the human makeup that seeks escapism, the negation of reality. This element is no more prominent in American society than others, but is manifest, and is at the root of our problem, in my view.[38]

Therefore the program cannot be restricted to a discussion of marihuana as if it existed in a vacuum.

7. Alternatives

Finally, the principal must also be concerned with initiating school and community involvement in an effort to find alternatives to using marihuana:

> Educators must ask themselves what kind of equivalents can be substituted for potentially destructive use of drugs.[39]

It is here that the principal will need to be as imaginative and creative as possible. There are countless opportunities to investigate such as sports, student publications, student-teacher debates, and starting a student business. In addition, the principal should look outside as well as within the school for alternatives. Many students who would exchange marihuana use for another more rewarding experience might

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38 Meeds, op. cit., p. 665
39 Van Patten, loc. cit.

be "turned-off" by an alternative simply because it was sponsored by the school.

In conclusion, it should be stated that it is also the principal's responsibility to see that a continuous evaluation is being made during the program. Although the principal need not do the actual evaluation himself, he should certainly be involved in the representative group which is charged with program assessment.

D. Program Implementation

Many principals differ in opinion on the problem of whether a school's drug education should be a short, intense program or whether it should last the entire academic year. There is also considerable difference of opinion on the question of whether drug education should be a separate course or whether it should be integreted into another course or courses.

1. Short Intense Programs

Principals frequently invite an expert from the medical, legal, or educational field to visit the school in order to speak on marihuana and other drugs. Often the visit is timed with the coming of a vacation and is preceeded and followed by various classroom discussions on the subject. The entire school attends the lecture and the community is invited.

However, short intense programs, despite the renown of the speaker or the high cost of the film, are something of which I am very suspicious. First, short programs are an easy way for a principal who is unaware or nonchalant about his school's marihuana problem to quiet the dissatisfaction in the community or central office. When an incident

arises, a speaker comes in, an article appears in the local newspaper, and community chatter subsides. The principal is seen as a dedicated administrator who recognizes the problem and is doing something about it. Obviously, this sort of leader neither really cares to see the problem nor does much to solve it.

A second reason to be wary of short programs is related to the belief that only the experts can handle discussions on the marihuana problem. This is false. Although school personnel will need to be trained and to know where to find facts and laws on marihuana, there is no reason why any intelligent and sincere person could not be of great benefit in a discussion of how marihuana is related to use and abuse, motivation, decision making, and the larger social problem of drug use. Perhaps the major reason for believing that only the expert can deal with marihuana is the fact that, by turning the issue over to someone else outside of the school, those inside the school can avoid really looking at the problem and taking concrete action to implement solutions.

A final reason why quick programs do not appear to be effective is that they are primarily "hit and miss". The issue is too complex and important to spend only one day a month or one week a year on the marihuana problem. This is like eating only once a week. People need to be free to discuss it anytime and the opportunity to do so should be provided by the school.

2. Ongoing Programs

To date, it is not uncommon for the discussion on marihuana to occur in one of the science classes as it is assumed that marihuana can be analyzed in terms of its chemical substance and possible physiological

effects. However, as was outlined in Part II, such a discussion would satisfy only two of the seven ingredients needed in a drug program, namely the facts on marihuana and the distinction between use and abuse. The social context in which marihuana is used and motivational factors are for the most part ignored.

Here is where the principal has another tremendous responsibility. There has always been much debate over what should and what should not be taught in the schools. For example, most Americans agree that the schools should not completely ignore the area of sex education. The present debate now is actually less concerned with the issue of whether or not to teach about sex than it is with the problem of what to teach and how to teach it. The area of sex is only one burning issue with which high school students are concerned. The Viet-Nam War is another. Marihuana is still another.

Therefore, a principal who wishes to deal effectively with the marihuana problem might wish to recommend the inititation of a course which would treat the problems of emotional and physical health.

> There must be a massive move toward fully credited courses of study in the health related area - whether you call it health education, social problems, human values is not important. The crisis in narcotics is only one problem. The increasing rate in venereal disease is another; and perhaps the greatest is the ever-increasing number of emotionally ill people in our society. And is health education not a logical place for attacking our problems of air and water pollution, population increase, human survival, and moral and ethical values?[40]

Naturally, participation of outside groups would be productive in the course formulation. Outside groups, however, does not imply only professional organizations. For example, if the course topic

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[40] Elliott, loc. cit.

were the Viet-Nam War, a war veteran could be invited. If the discussion were about drugs, an ex-addict might be asked to visit. As Elliott recommends, "the approach must be varied and community wide."[41]

George Demos suggested five years ago:

> Let the hippies, the drug users, the militants, and the activists have their say. I would even provide vehicles of communication and sounding boards for their ideas.[42]

The "vehicle" would be the classroom and its facilities. The "sounding board" would be the school population.

As finding possible solutions to pressing problems is a major ingredient of effective leadership, the principal must endeavor to implement practical and imaginative solutions to the marihuana problem. Whether a school attempts to create a fully credited course or chooses to treat marihuana and its users as part of an already existent course is certainly important. However, the reason for doing anything at all, the objective, is more important, namely, that a realistic attempt be made to cope with some of the problems which amplify the harmful and largely unnecessary generation gap.

E. Two Case Studies of Drug Education Programs

1. Urban, Predominantly Black, High School[43]

A team of qualified investigators recently attempted to evaluate the drug education program in an urban, public school which was two-thirds black, grades seven through twelve. Various publics within this school community, including the principal and his staff, admitted that

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41 ibid., p. 47
42 Demos, op. cit., p. 216
43 see "Drugs and the Schools: Two Case Studies", op. cit., pp. 5-10

they had a drug problem but that their ongoing program was handling it fairly well. However, there was a credibility gap between certain publics and the program did not have the support or interest of various student groups.

For example, when the investigating team questioned the students, the students responded as follows:

> 'All we do is read little pamphlets and watch those movies.' Only a few days and a few pages of text are spent on the subject, they claimed. Further, they objected to what they termed the 'brainwashing technique'. They resented the lack of sensitivity to underlying causes and they were turned off by the heavy emphasis on physiology instead of the psychology of addiction.[44]

Up to this point, the major ineffectiveness of the program was due to the fact that the principal did not play an active or even interested role in the attempted solution of the problem. He was a passive spectator. He was not a leader but a manager performing certain minimal administrative duties.

However, the situation was radically changed, not by the principal but by the students. A group of students visited a local hospital and were surprised to find that some of their classmates were there for treatment of drug abuse. The students were so concerned that they immediately returned to school to ask the principal if they would be allowed to set up an Anti-Drug Week. The principal saw no reason why this request shouldn't be granted so the students began planning to get the school really involved. In addition to the films, posters, discussions, and guests, a small group of students attended a faculty meeting. Their intent was obvious: to get the teachers to open their eyes.

In the course of the faculty meeting, there were undoubtedly those

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[44] ibid., p. 8

who believed that the problem was not really that bad and that young people have a tendency to exaggerate. To counter this argument, several students pulled from their pockets an impressive assortment of drugs ranging from hashish (a form of marihuana) to Darvon. They had gathered these drugs in a matter of two hours and if only given 24 hours, they could uncover any drug requested. Needless to say, "this enterprise caused quite a stir."[45]

The school's major difficulty was, of course, that the principal had allowed the school to, as the evaluative report stated:

> ...become laden down with concerns that overtaxed the machinery, and less pronounced problems were going unheeded or being ineffectively handled.[46]

The problem was "less pronounced" only in the sense that it was less obvious than others. This situation is undoubtedly also true in many other schools. After all, few students flagrantly smoke marihuana in the halls or go to the principal to describe what they saw the last time they were "stoned".

2. Small, Predominantly White, Protestant, High School[47]

A second case study is interesting to describe because it involves a school which many people think of as being the opposite of an urban, predominantly black, high school. This second high school investigated was small, predominantly white, Protestant, and was situated in a suburban community.

The principal here didn't believe that his school had a drug

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45 ibid., p. 9
46 ibid., p. 10
47 ibid., pp. 11-14

problem. According to him, such things just didn't exist in "good" neighborhoods. The local police, however, had a different feeling. Several officers on the force compiled some basic information on drugs and sent it out to the parents in the community:

> The police said that the initial reaction from parents was completely defensive; they were insulted that the behavior of their children was even questioned. Perhaps the parents felt that they were being attacked and accused of having failed in helping their children cope with their probelms.[48]

Fortunately, once the concern for drug users was triggered, the principal became involved. He had been in the district for six years and had a fair amount of good rapport with faculty, students, members of the community, and the system's administration. With this already existent, partially open climate, the principal and various segments of the school and community began to look at their values with respect to drugs and drug users. They defined the problem and assessed the extent of drug use in their area. With the help of a "mini-grant" of $5,000 from the government, they implemented a program which concerned itself with drugs and reasons why people turn to drugs.

In both cases, it was not the principal who initiated the program. In fact, both principals seemed to react more than act. It took something to jar them loose. To say this is unfortunate would be an understatement. Educational leaders are not those who rise to meet an already serious problem and ask "Did somebody call me?" They must not wait to be called on but already be there.

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[48] ibid., p. 11

PART III MEASURES TO BE EMPLOYED WHEN A PRINCIPAL DISCOVERS MARIHUANA OFFENSES: SCHOOL POLICY AND ITS IMPLEMENTATION

Regardless of the effectiveness of a drug prevention program, most principals will have to deal with specific incidents when marihuana users are reported. What does he do? To whom is he responsible? What are his choices of action?

It is advisable that the principal not be caught off guard. He should have a policy statement regarding marihuana use, as well as the use of other drugs, to which he could turn:

> When a student is found with drugs, it is mandatory that the school have a stated policy regarding them, or it has no means of disciplining the student.[49]

However, what sort of policy is this to be? Upon what should it be based? Who should make it up? What exactly is implied in the phrase "disciplining the student"?

A. Legal Role of the Principal

Despite the fact that the principal owes allegiance to the field of professional educators, he, his superintendent, and the local board are reponsible to the state for what occurs within a particular school. This definitely includes apprehending a student marihuana user.

Therefore, it is strongly suggested that the principal understand the laws regarding marihuana use and that he have copies of these documents in his school for any interested party to examine. He should be aware not only of national regulations but also of state laws and state and local board policies (if such policies exist).

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[49] Langer, op. cit., p. 15

1. Federal Level

Legal enactments are usually reflections of the societal values at a given time and place. Until recent years, the feeling most Americans had regarding marihuana users was one of mistrust. The National Commission on Marihuana and Drug Abuse stated in 1972:

> In short, the mass character of youthful marihuana use has been frequently interpreted as a rejection of the institutionalized principles of law and a lack of concern for individual social responsibility, which threatens the social and political institutions. Implicit in this view is the assumption that a young person who uses marihuana in spite of the law cannot be expected to assume an individually and socially responsible adult role.[50]

In the first half of the twentieth century we were fooled by the marihuana plant much in the same was as Americans and Europeans were fooled by the tomato in the sixteenth and seventeenth centuries.

> For years, it was considered poisonous and was grown only for decoration...Later, the plant came to be looked on as an aphrodisiac, a love potion, and the young men of France and Italy would gobble one down before calling on their lady loves... To the Puritans settling the New England shores, a love potion was as bad a poison, and the tomato plant was used only for a garden decoration...I believe Thomas Jefferson was one of the first brave souls to actually eat a tomato.[51]

Such claims about marihuana were prevalent in America until recent years. Sepcifically, marihuana was classified as a narcotic drug and was thought to be addictive. In fact, Congress continued in the 1950's to escalate penaltics for marihuana use. The penalties at that time approved at the federal level are displayed on the following page in Table 5.[52]

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50 National Commission on Marihuana and Drug Abuse, Marihuana: A Signal of Misunderstanding (Washington: Government Printing Office, 1972), p. 93

51 Millicent B. Hering, "The Law and Maryjane", American Libraries, Vol. 1, No. 9 (Oct., 1970), p. 898

52 National Commission on Marihuana and Drug Abuse, op. cit., p. 105

Table 5.

	Possession Minimum Sentence
First Offense	2 years
Second Offense	5 years
Third and Subsequent Offense	10 years
Fine	$20,000
	Sale **Minimum Sentence**
First Offense	5 years
Second and Subsequent Offense	10 years
Sale to Minor by Adult	10 years

As marihuana use increased, and also the number of arrests in the late 1950's and in the 1960's, considerable attention was paid to marihuana and a large amount of research was conducted by the federal government in an effort to determine a realistic picture of the marihuana problem. This research continues today.

In effect, there has recently been

> ...a trend toward leniency in marihuana cases within the legal system and a recognition by policy-makers of widespread uncertainty regarding the effects of marihuana.[53]

By mid 1970, marihuana was no longer considered a narcotic by 24 states and the District of Columbia. In the meantime, the United States Supreme Court declared certain aspects of the Marihuana Tax Act of 1937 unconstitutional[54] and certain members of the federal government began to express their concerns in an effort to seek new legislation with regard to marihuana and its users.

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53 ibid., p. 107

54 see Leary v. U.S., 395 U.S., 6, 89 S. Ct. 1532 (1969)

Possession of all drugs, including marihuana, was reduced to a misdemeanor. Special treatment for first offenders was provided, allowing expungement of the record upon satisfactory completion of a probationary period. Casual transfers of marihuana were treated in the same manner as possession. After a series of wide-ranging hearings, Congress passed the Comprehensive Drug Abuse Prevention and Control Act[55], and on October 27, 1970, the President signed it into law.[56]

After passage of this law came the Uniform Controlled Substances Act which recommended to states that they classify drug possession as a misdemeanor. As of early 1972, 42 states and the District of Columbia have done so. In the remaining eight states, four have the option of sentencing possessors as misdemeanants.

Federal regulations as they presently stand are displayed below in Table 6.[57]

Table 6.

	Maximum Sentences			
	Marihuana & Other Non-Controlled Substances		Narcotics	
	First Offense	Second Offense	First Offense	Second Offense
Simple possession (distribution of small amounts of marihuana is treated the same as simple possession)				
Years	1	2	1	2
Dollars	5,000	10,000	5,000	10,000
Unlawful distribution, possession with intent to distribute, manufacturing, importation, exportation				
Years	5	10	15	30
Dollars	15,000	30,000	25,000	50,000

55 See Appendix I for a copy of this law
56 National Commission on Marihuana and Drug Abuse, op. cit., p. 108
57 ibid., Appendix, Vol. 1, p. 496

In helping to formulate a school policy, the principal must be aware of these trends in the federal laws as well as the laws themselves. It should be noted that although penalties for student use of marihuana have been markedly reduced in the past decade, the penalties which now exist are still strict enough to send an 18 year old senior to jail for two years. If applied to distribution of marihuana, these penalties could send him away for as long as ten years.

2. State Level

The various laws regarding marihuana use and distribution vary from state to state.[58] For example, in Virginia, a state which followed recommendations set forth in the Uniform Controlled Substances Act, first possession of marihuana is considered a misdemeanor. However, second and subsequent offenses are punishable as felonies for which the user may be imprisoned for two to 20 years or spend not more than 12 months in jail.[59]

The statutes of the Commonwealth of Virginia clearly differentiate between possession of hashish, a more potent form of marihuana, and marihuana itself.[60] Possession of hashish is punishable as a felony and those convicted may serve anywhere from one to ten years in prison. The word "possession" was defined in a recent Virginia case, Ritter v. Commonwealth[61], as including the "use or being under the influence"[62].

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58 see Appendix II for a summary of the various state regulations.
59 National Commission on Marihuana and Drug Abuse, op. cit., p. 567
60 ibid.
61 see Ritter v. Commonwealth, 210 Va. 732, 740 (1970)
62 National Commission on Marihuana and Drug Abuse, loc. cit.

The Virginia principal should be aware of the fact that penalties in this state are especially severe in comparison to those in other states. For example, distribution may be punishable as a felony with imprisonment of one to 40 years and/or a fine of not more than $5,000. Distribution to a minor is also considered a felony with imprisonment of five to 40 years and/or a fine of not more than $50,000.[63]

As of early 1972, only 24 states including Virginia have passed some sort of law which requires that schools provide drug education. Most of these laws leave the actual contents and methods to be used up to the educational agencies within the states. As of December 31, 1970, only 17 states had actually developed a drug education curriculum and another ten said that they were making preparations to do so. It is surprising to note that at that time 20 states still left the development of drug education programs and policies entirely up to the local school districts.[64]

Upon examination of the Virginia State Department of Education's policy regarding drug education, the National Commission on Marihuana and Drug Abuse had this to say:

> The Department has developed new materials relating to health education. However, only minimum references are made to drugs and no special programs on marihuana exist in the elementary grades. On the secondary level, marihuana is treated with other drugs but is given no special emphasis.[65]

3. Local Level - the School Policy

The Virginia State Board of Education approved on January 29, 1971,

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63 ibid.
64 ibid., Appendix, Vol. II, pp. 1200-1
65 ibid., p. 1224

Guidelines for Establishing a Policy and Procedures for Drug Discovery in Schools.[66] These Guidelines required that all local school boards establish a drug policy as it is the school's responsibility to deal with this "serious social and health problem".[67] On November 5, 1971, the Virginia State Department of Education sent out a prototype policy for examination and interpretation by local school boards.[68] This suggested policy stated the following:

> The principal has the overall responsibility within his school for the disposition of drug related incidents...The principal will make the decision relative to when the law enforcement officials shall be involved and has the responsibility of informing the parents or legal guardian.[69]

This suggested policy further states that the superintendent must always be informed of drug incidents, that desks and lockers may be searched under certain conditions, that the principal must turn over contraband material to the public authorities, that visitors must register when entering school, that parking areas must be supervised, and that certain seldomly used areas of the school must be kept locked.

The following specific responsibilities were also outlined for the Virginia principal:[70]

> 1. Shall have knowledge of drugs, their use and abuse, and drug education.
> 2. Shall report all activities relating to drugs to the superintendent.
> 3. Shall be familiar with sources to which drug problems may be referred.
> 4. Shall report any law violations concerning drugs to the law enforcement officials after consultation with the superintendent.
> 5. Shall notify parents or legal guardian when a student's

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66 see Appendix III for a copy of this document
67 see Appendix III, page 1.
68 see Appendix IV for a copy of this document
69 see Appendix IV, pp. 1-2
70 see Appendix IV, pp. 3-4

appearance and behavior seem symptomatic of drug usage. In an emergency medical assistance shall be obtained.

6. Shall take appropriate disciplinary action against a student who is guilty of violating any drug law.

7. Shall require all students who take medication at school to have written permission on file stating the type, dosage, and duration of treatment.

8. Shall keep accurate information concerning drug use or abuse in confidential files.

9. Shall assist teachers of health education in including instruction in drugs and drug abuse.

What is important to mention here is that the Virginia principal has considerable breathing room in the interpretation of how an incident is to be handled. The state and federal laws as well as the Virginia State Department of Education policy are simply the metes and bounds within which the principal must act.

B. The Principal's Interpretation of the Laws and the School Policy

Although the Virginia State Department of Education has stated that the principal must report all drug incidents to his superintendent, and that, after consultation with the superintendent, these incidents must be reported to the local law enforcement officials, it is reasonable to assume that some degree of understanding can be established between school officials and local police authorities. Although the drug incident should be reported, it is unnecessary that every offender be turned over to the police, provided, of course, that the police and the school officials share mutual trust and respect. A Massachusetts lawyer who is known for his experience with handling drug cases, suggested:

> The police should not be informed by the school officials or by you (parents), unless you can be absolutely certain that a) there is no other alternative and b) they will deal with the situation in a manner other than bringing the criminal law to bear against your child. There are other resources in your community - a mental health center, a drop-in center, or a hot line which can put you in touch with someone or some place that will help you. (parenthesis mine) 71

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71 Neil L. Chayet, "A Briefing for Parents: Your Child and the Law", Today's Education, Vol. 61, No. 3 (March, 1972), p. 40

Especially in the case of marihuana which is not considered to be a narcotic drug in most states, the principal, if authorized by the local board, should use his professional judgement in determining whether or not a student's drug offense needs to be handled by the police.

> Most school administrators, faced with the problem of dealing with drug users, probably accept the idea that persons who do harm to themselves or dangerous things to themselves need help rather than punishment. No doubt this is part of the reason for their reluctance to turn students over to the police.[72]

The obvious question many principals would raise here is whether or not they are required by law to turn in a marihuana user. Although the statutes do not spell this out, the present situation would indicate that the principal is not legally required to turn in all drug offenders, especially in the case of first offenses for marihuana use.

> It is a common misapprehension that if a student reveals use of a drug or plans to do so, it is incumbent upon one to report him to the police; otherwise, it is assumed, one may become accessory to a felony. This is false. If a person merely states that he has done something or plans to do something, it does not mean that he has in fact, done so or will do so. I suggest that those of us who have contacts with drug users or potential drug users gain a full understanding of privileged communication, professional ethics, and the treatment of confidential information.[73]

Another question arises as to what to do with the confiscated marihuana. The obvious answer is to turn it, but not necessarily the user, over to the police. However, not everyone agrees with this procedure.

> The fact that you find or are given a substance which appears to be or is said to be marihuana or some other substance does not necessarily mean that it is in fact that substance. You are not a

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72 Alfred R. Lindesmith, "Drug Use as a Divisive Influence", Phi Delta Kappan, Vol. L, No. 4 (Dec., 1968), p. 221

73 Demos, op. cit., p. 215

> chemist, and there is no obligation on you to secure a chemical analysis. In most situations, the best thing is to permanently dispose of the substance as quickly as possible. Because of the lack of positive identification of the substance, there is no obligation on you to inform the police.[74]

This, however, would seem to be a very risky policy for a principal to adopt. If it could be proven, for example, that the principal who disposed of the substance actually believed the substance to be marihuana, he could find himself in some very tight and embarrassing legal difficulties. Furthermore, it would be extremely valuable information for a principal to know whether or not the substance were hashish or marihuana as penalties in Virginia differentiate between the two. It would also be useful to know exactly how "pure" the substance was.

The final and most important question to raise involves the marihuana user? What is to be done with the student? Present trends indicate that expulsion is generally too severe a penalty, provided of course that the student hasn't repeatedly broken the law and that he doesn't constitute a danger to the other students. Suspension is a possibility if the activities planned for the period of suspension are beneficial and not harmful to the student. Any justification for suspension must come from the fact that being away from school proves to be more rehabilitative and worthwhile than remaining in school. This involves then the local school area and the relationship which exists between the student and his parents.

Naturally, doing nothing at all about the offense is practically synonymous with condoning student marihuana use. The point to be emphasized is that the punishment must fit the offense. Although guidelines should

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[74] Chayet, loc. cit.

be established by each school concerning such things as where and when the offense occured, frequency of marihuana use, previous record, and motivations for using marihuana, there should be enough flexibility within the choices of disciplinary action so as to provide for individual student differences. Therefore, implicit in the determination of a penalty is the belief that it must provide the student with the opportunity to examine his values and needs and to find alternatives for using marihuana. It is here that the school and its principal should help.

In summary, the principal should have the full cooperation and understanding of school authorities, teachers, students, law officers, and community members. Furthermore, his school's policy should accurately reflect the thinking of the entire community but not conflict with federal and state laws or school board policies. In addition, the policy must provide the principal with the opportunity to use his common sense and professional opinion. To do anything less is to confine the principal to the role of a manager who simply processes marihuana users through predetermined, rigid penalties. Perhaps more importantly, to do anything less is to deprive the school of the educational leadership it so desperately needs to grow and to survive.

C. Two Case Studies of Implementing School Policies

1. East Coast, Suburban, White High School[75]

An average sized, suburban, middle to upper middle, predominantly white school recently surveyed its student body and found that 11% of the students used marihuana at least once a week and that 33% of the

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[75] Ochberg, op. cit., pp. 57-59

students have tried it. The school has a quiet past in the sense that no major disciplinary problems have arisen and students claim that they do not let smoking marihuana interfere with their schooling.

Whenever a student is found in class to be under the unfluence of drugs, the teacher reports the student to the assistant principal who calls the nurse. If the nurse finds that the student has taken illicit drugs, the parents, not the police, are notified. However, if an ambulance is called, the local law authorities are notified. If a student is found with drugs in his possession or is caught selling drugs, the assistant principal notifies the police as well as the parents.

2. A New Jersey High School Case[76]

The case "E.E." v. Board of Education of the Township of Ocean, Monmouth County (N.J., 1971) points out some of the difficulties a school may encounter when implementing its policy. One of the students set a meeting with two other students to smoke hashish during lunch period. The vice-principal found them and asked what they were doing. They freely admitted that they were smoking "pot". As a result, the school suspended the student who had arranged the rendez-vous. After a period of seven weeks, the student was readmitted on probation. The terms of this probation were as follows:

1. He could take only those courses necessary for graduation and admission into a college or university.

2. He would be obliged to leave school grounds every day after sixth period.

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[76] see Laurence W. Knowles, "'Pot' Smoking Students Not Easy To Discipline", Nation's Schools, Vol. 89, No. 6 (June, 1972) p. 58

3. He would not be allowed to eat lunch at school.

4. He would be restricted from extracurricular activity participation.

The student felt that the punishment was too severe and appealed the school's decision to the New Jersey State Commissioner of Education. The school administrators quickly organized and presented the argument that the student could have been permanently suspended as he constituted a threat to the other students. The Commissioner ruled in favor of the student and required that the student's record be expunged. In addition, the Commissioner ruled that the probationary terms be lifted with the exception of the restriction from participating in extracurricular activities.

Meanwhile, the student had gone to juvenile court where the ruling was simply an order to be on good behavior for a period of six to nine months. The student during this period was not required to report to any probation officer. Therefore, if the student had chosen to go to court instead of to the Commissioner, the youngster might easily have been fully reinstated into school with no probationary limitations whatsoever.

Conclusion

To a large extent, a school will be no better or worse than its principal. It is perhaps unfortuante that a school that has a poor principal continues to survive by merely going through the motions of meeting the minimal needs of its students.

A good definition of learning might be the development of the ability to solve problems. Too often these problems are artificially imposed on the student. They are external to him. They involve getting the right answer in Math class or remembering what the text explained as the major causes of the Civil War. Perhaps due to such external problems, students light up a "joint" after school in an effort to understand themselves or simply to "forget it all".

Principals need to remember why they occupy the leadership position in their schools. Yes, bus schedules are important. So is knowing who was at assembly and who was not. But students are young people with innumerable questions about themselves and their environment. If schools leave these questions unchallenged, they have failed. So have the principals.

If a principal is to be a leader, he must have followers. No one will follow a man who doesn't know where he is going or who is going where the followers don't care to go. Although the problem of marihuana presents anxiety, fear, and sometimes anger, it also provides a tremendous opportunity for principals to open their minds and hearts to young people. Problem-sharing is a marvelous way to begin problem-solving.

To solve the marihuana problem, the principal must concern himself not with marihuana but with marihuana users. Many students are in trouble,

some of them big trouble, and they want help despite the fact that they might have long hair or say that they wish to be left alone.

In order to be leaders, principals will have to allow themselves to be known by teachers and students as people as well as professionals. They will have to show themselves as humans, not just as administrators. Above all, they must never lose sight of the fact that marihuana is not evil by itself but is symptomatic of the unmet and perhaps ignored needs of many young people. The principal must recognize these needs and ensure that his school is attempting to satisfy them. Otherwise the schools will never even come close to their role of helping in the effective development of young people and of a great nation.

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APPENDICES

Public Law 91-513
91st Congress, H. R. 18583
October 27, 1970

An Act

84 STAT. 1236

To amend the Public Health Service Act and other laws to provide increased research into, and prevention of, drug abuse and drug dependence; to provide for treatment and rehabilitation of drug abusers and drug dependent persons; and to strengthen existing law enforcement authority in the field of drug abuse.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Comprehensive Drug Abuse Prevention and Control Act of 1970". Comprehensive Drug Abuse Prevention and Control Act of 1970.

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TITLE I—REHABILITATION PROGRAMS RELATING TO DRUG ABUSE

PROGRAMS UNDER COMMUNITY MENTAL HEALTH CENTERS ACT RELATING TO DRUG ABUSE

SECTION 1. (a) Part D of the Community Mental Health Centers Act is amended as follows:

(1) Sections 251, 252, and 253 of such part (42 U.S.C. 2688k, 2688l, and 2688m) are each amended by inserting "and other persons with drug abuse and drug dependence problems" immediately after "narcotic addicts" each place those words appear in those sections. 82 Stat. 1009.

(2) Clauses (A) and (C) of section 252 of such part are each amended by inserting ", drug abuse, and drug dependence" immediately after "narcotic addiction".

(3) The heading for such part is amended to read as follows:

"PART D—NARCOTIC ADDICTION, DRUG ABUSE, AND DRUG DEPENDENCE PREVENTION AND REHABILITATION".

(b) Part E of such Act is amended as follows:

(1) Section 261(a) of such part (42 U.S.C. 2688o) is amended by striking out "$30,000,000 for the fiscal year ending June 30, 1971, $35,000,000 for the fiscal year ending June 30, 1972, and $40,000,000 for the fiscal year ending June 30, 1973" and inserting in lieu thereof "$40,000,000 for the fiscal year ending June 30, 1971, $60,000,000 for the fiscal year ending June 30, 1972, and $80,000,000 for the fiscal year ending June 30, 1973". 82 Stat. 1010; Ante, p. 57.

(2) Section 261(a) of such part is further amended by inserting ", drug abuse, and drug dependence" immediately after "narcotic addiction".

(3) Sections 261(c) and 264 are each amended by inserting "and other persons with drug abuse and drug dependence problems" immediately after "narcotic addicts". Ante, pp. 58, 61.

(4) The section headings for sections 261 and 263 are each amended by striking out "AND NARCOTIC ADDICTS" and inserting in lieu thereof ", NARCOTIC ADDICTS, AND OTHER PERSONS WITH DRUG ABUSE AND DRUG DEPENDENCE PROBLEMS".

(c) Part D of such Act is further amended by redesignating sections 253 and 254 as sections 254 and 255, respectively, and by adding after section 252 the following new section: 42 USC 2688n.

"DRUG ABUSE EDUCATION

"SEC. 253. (a) The Secretary is authorized to make grants to States and political subdivisions thereof and to public or nonprofit private agencies and organizations, and to enter into contracts with other private agencies and organizations, for— Grants. Contract authority.

"(1) the collection, preparation, and dissemination of educational materials dealing with the use and abuse of drugs and the prevention of drug abuse, and

"(2) the development and evaluation of programs of drug abuse education directed at the general public, school-age children, and special high-risk groups.

"(b) The Secretary, acting through the National Institute of Mental Health, shall (1) serve as a focal point for the collection and dissemination of information related to drug abuse; (2) collect, prepare, and disseminate materials (including films and other educational devices) dealing with the abuse of drugs and the prevention of drug

abuse; (3) provide for the preparation, production, and conduct of programs of public education (including those using films and other educational devices); (4) train professional and other persons to organize and participate in programs of public education in relation to drug abuse; (5) coordinate activities carried on by such departments, agencies, and instrumentalities of the Federal Government as he shall designate with respect to health education aspects of drug abuse; (6) provide technical assistance to State and local health and educational agencies with respect to the establishment and implementation of programs and procedures for public education on drug abuse; and (7) undertake other activities essential to a national program for drug abuse education.

Personnel training.

"(c) The Secretary, acting through the National Institute of Mental Health, is authorized to develop and conduct workshops, institutes, and other activities for the training of professional and other personnel to work in the area of drug abuse education.

Appropriation.

"(d) To carry out the purposes of this section, there are authorized to be appropriated $3,000,000 for the fiscal year ending June 30, 1971, $12,000,000 for the fiscal year ending June 30, 1972, and $14,000,000 for the fiscal year ending June 30, 1973."

82 Stat. 1009; Ante, p.1238. 42 USC 2689k.

(d) Such part D is further amended by adding at the end thereof the following new section:

"SPECIAL PROJECTS FOR NARCOTIC ADDICTS AND DRUG DEPENDENT PERSONS

Grants, treatment and rehabilitation.

"SEC. 256. (a) The Secretary is authorized to make grants to public or nonprofit private agencies and organizations to cover a portion of the costs of programs for treatment and rehabilitation of narcotic addicts or drug dependent persons which include one or more of the following: (1) Detoxification services or (2) institutional services (including medical, psychological, educational, or counseling services) or (3) community-based aftercare services.

Conditions.

"(b) Grants under this section for the costs of any treatment and rehabilitation program—

"(1) may be made only for the period beginning with the first day of the first month for which such a grant is made and ending with the close of eight years after such first day; and

Limitation.

"(2)(A) except as provided in subparagraph (B), may not exceed 80 per centum of such costs for each of the first two years after such first day, 75 per centum of such costs for the third year after such first day, 60 per centum of such costs for the fourth year after such first day, 45 per centum of such costs for the fifth year after such first day, and 30 per centum of such costs for each of the next three years after such first day; and

"(B) in the case of any such program providing services for persons in an area designated by the Secretary as an urban or rural poverty area, such grants may not exceed 90 per centum of such costs for each of the first two years after such first day, 80 per centum of such costs for the third year after such first day, 75 per centum of such costs for the fourth and fifth years after such first day, and 70 per centum of such costs for each of the next three years after such first day.

"(c) No application for a grant authorized by this section shall be approved by the Secretary unless such application is forwarded through the State agency responsible for administering the plan submitted pursuant to section 204 of this Act or, if there be a separate State agency, designated by the Governor as responsible for planning, coordinating, and executing the State's efforts in the treatment and

77 Stat. 291; 81 Stat. 79. 42 USC 2684.

rehabilitation of narcotic addicts and drug dependent persons, through such latter agency, which shall submit to the Secretary such comments as it deems appropriate. No application for a grant under this section for a program to provide services for persons in an area in which is located a facility constructed as a new facility after the date of enactment of this section with funds provided under a grant under part A or this part shall be approved unless such application contains satisfactory assurance that, to the extent feasible, such program will be included as part of the programs conducted in or through such facility.

"(d) The Secretary shall make grants under this section for projects within the States in accordance with criteria determined by him designed to provide priority for grant applications in States, and in areas within the States, having the higher percentages of population who are narcotic addicts or drug dependent persons. Criteria.

"(e) There are authorized to be appropriated to carry out this section not to exceed $20,000,000 for the fiscal year ending June 30, 1971; $30,000,000 for the fiscal year ending June 30, 1972; and $35,000,000 for the fiscal year ending June 30, 1973." Appropriation.

BROADER TREATMENT AUTHORITY IN PUBLIC HEALTH SERVICE HOSPITALS FOR PERSONS WITH DRUG ABUSE AND OTHER DRUG DEPENDENCE PROBLEMS

SEC. 2. (a) Part E of title III of the Public Health Service Act is amended as follows:

(1) Section 341(a) of such part is amended by adding immediately after "addicts" the second time it appears the following: "and other persons with drug abuse and drug dependence problems". 80 Stat. 1449. 42 USC 257.

(2)(A) Sections 342, 343, 344, and 346 of such part are each amended by inserting "or other persons with drug abuse and drug dependence problems" immediately after "addicts" each place it appears in those sections. 58 Stat. 699; 68 Stat. 79. 42 USC 258-260, 261.

(B) The section heading of section 342 of such part is amended by inserting "OR OTHER PERSONS WITH DRUG ABUSE AND DRUG DEPENDENCE PROBLEMS" after "ADDICTS".

(3) Sections 343 and 344 of such part are each amended by inserting "or other person with a drug abuse or other drug dependence problem" immediately after "addict" each place it appears in those sections.

(4) Sections 343, 344, and 347 of such part are each amended by inserting ", drug abuse, or drug dependence" immediately after "addiction" each place it appears in those sections. 42 USC 261a.

(5) Section 346 of such part is amended by inserting "or substance controlled under the Controlled Substances Act" immediately after "habit-forming narcotic drug". Post, p. 1242.

(6) The heading for such part is amended to read as follows:

"PART E—NARCOTIC ADDICTS AND OTHER DRUG ABUSERS".

(b) Section 2 of the Public Health Service Act (42 U.S.C. 201) is amended by adding after paragraph (p) the following new paragraph: 58 Stat. 682; 74 Stat. 34.

"(q) The term 'drug dependent person' means a person who is using a controlled substance (as defined in section 102 of the Controlled Substances Act) and who is in a state of psychic or physical dependence, or both, arising from the use of that substance on a continuous basis. Drug dependence is characterized by behavioral and other responses which include a strong compulsion to take the substance on a continuous basis in order to experience its psychic effects or to avoid the discomfort caused by its absence." Post, p. 1243.

RESEARCH UNDER THE PUBLIC HEALTH SERVICE ACT IN DRUG USE, ABUSE, AND ADDICTION

Research populations, protection of identity.
70 Stat. 929.

SEC. 3. (a) Section 303(a) of the Public Health Service Act (42 U.S.C. 242a(a)) is amended by adding after and below paragraph (2) the following:

"The Secretary may authorize persons engaged in research on the use and effect of drugs to protect the privacy of individuals who are the subject of such research by withholding from all persons not connected with the conduct of such research the names or other identifying characteristics of such individuals. Persons so authorized to protect the privacy of such individuals may not be compelled in any Federal, State, or local civil, criminal, administrative, legislative, or other proceedings to identify such individuals."

80 Stat. 1184.
42 USC 246.

(b) Section 314(d)(2) of the Public Health Service Act is amended—

(1) by striking out "and" at the end of subparagraph (I);

(2) by striking out the period at the end of subparagraph (J) and inserting in lieu thereof "; and"; and

(3) by adding after subparagraph (J) the following new subparagraph:

"(K) provide for services for the prevention and treatment of drug abuse and drug dependence, commensurate with the extent of the problem."

81 Stat. 79.

(c) Section 507 of the Public Health Service Act (42 U.S.C. 225a) is amended—

(1) by striking out "available for research, training, or demonstration project grants pursuant to this Act" and inserting in lieu thereof "available under this Act for research, training, or demonstration project grants or for grants to expand existing treatment and research programs and facilities for alcoholism, narcotic addiction, drug abuse, and drug dependence, and appropriations available under the Community Mental Health Centers Act for construction and staffing of community mental health centers and alcoholism and narcotic addiction, drug abuse, and drug dependence facilities", and

77 Stat. 190.
42 USC 2681 note.

(2) by inserting immediately before the period at the end thereof the following: ", except that grants to such Federal institutions may be funded at 100 per centum of the costs".

MEDICAL TREATMENT OF NARCOTIC ADDICTION

SEC. 4. The Secretary of Health, Education, and Welfare, after consultation with the Attorney General and with national organizations representative of persons with knowledge and experience in the treatment of narcotic addicts, shall determine the appropriate methods of professional practice in the medical treatment of the narcotic addiction of various classes of narcotic addicts, and shall report thereon from time to time to the Congress.

Report to Congress.

TITLE II—CONTROL AND ENFORCEMENT

PART A—SHORT TITLE; FINDINGS AND DECLARATION; DEFINITIONS

SHORT TITLE

SEC. 100. This title may be cited as the "Controlled Substances Act". Citation of title.

FINDINGS AND DECLARATIONS

SEC. 101. The Congress makes the following findings and declarations:

(1) Many of the drugs included within this title have a useful and legitimate medical purpose and are necessary to maintain the health and general welfare of the American people.

(2) The illegal importation, manufacture, distribution, and possession and improper use of controlled substances have a substantial and detrimental effect on the health and general welfare of the American people.

(3) A major portion of the traffic in controlled substances flows through interstate and foreign commerce. Incidents of the traffic which are not an integral part of the interstate or foreign flow, such as manufacture, local distribution, and possession, nonetheless have a substantial and direct effect upon interstate commerce because—

(A) after manufacture, many controlled substances are transported in interstate commerce,

(B) controlled substances distributed locally usually have been transported in interstate commerce immediately before their distribution, and

(C) controlled substances possessed commonly flow through interstate commerce immediately prior to such possession.

(4) Local distribution and possession of controlled substances contribute to swelling the interstate traffic in such substances.

(5) Controlled substances manufactured and distributed intrastate cannot be differentiated from controlled substances manufactured and distributed interstate. Thus, it is not feasible to distinguish, in terms of controls, between controlled substances manufactured and distributed interstate and controlled substances manufactured and distributed intrastate.

(6) Federal control of the intrastate incidents of the traffic in controlled substances is essential to the effective control of the interstate incidents of such traffic.

(7) The United States is a party to the Single Convention on Narcotic Drugs, 1961, and other international conventions designed to establish effective control over international and domestic traffic in controlled substances. 18 UST 1407.

DEFINITIONS

SEC. 102. As used in this title:

(1) The term "addict" means any individual who habitually uses any narcotic drug so as to endanger the public morals, health, safety, or welfare, or who is so far addicted to the use of narcotic drugs as to have lost the power of self-control with reference to his addiction.

(2) The term "administer" refers to the direct application of a controlled substance to the body of a patient or research subject by—

(A) a practitioner (or, in his presence, by his authorized agent), or

(B) the patient or research subject at the direction and in the presence of the practitioner,

whether such application be by injection, inhalation, ingestion, or any other means.

(3) The term "agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser; except that such term does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman, when acting in the usual and lawful course of the carrier's or warehouseman's business.

(4) The term "Bureau of Narcotics and Dangerous Drugs" means the Bureau of Narcotics and Dangerous Drugs in the Department of Justice.

(5) The term "control" means to add a drug or other substance, or immediate precursor, to a schedule under part B of this title, whether by transfer from another schedule or otherwise.

Post, p. 1247.

(6) The term "controlled substance" means a drug or other substance, or immediate precursor, included in schedule I, II, III, IV, or V of part B of this title. The term does not include distilled spirits, wine, malt beverages, or tobacco, as those terms are defined or used in subtitle E of the Internal Revenue Code of 1954.

68A Stat. 595.
26 USC 5001.

(7) The term "counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person or persons who in fact manufactured, distributed, or dispensed such substance and which thereby falsely purports or is represented to be the product of, or to have been distributed by, such other manufacturer, distributor, or dispenser.

(8) The terms "deliver" or "delivery" mean the actual, constructive, or attempted transfer of a controlled substance, whether or not there exists an agency relationship.

(9) The term "depressant or stimulant substance" means—

(A) a drug which contains any quantity of (i) barbituric acid or any of the salts of barbituric acid; or (ii) any derivative of barbituric acid which has been designated by the Secretary as habit forming under section 502(d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352(d)); or

52 Stat. 1050.

(B) a drug which contains any quantity of (i) amphetamine or any of its optical isomers; (ii) any salt of amphetamine or any salt of an optical isomer of amphetamine; or (iii) any substance which the Attorney General, after investigation, has found to be, and by regulation designated as, habit forming because of its stimulant effect on the central nervous system; or

(C) lysergic acid diethylamide; or

(D) any drug which contains any quantity of a substance which the Attorney General, after investigation, has found to have, and by regulation designated as having, a potential for abuse because of its depressant or stimulant effect on the central nervous system or its hallucinogenic effect.

(10) The term "dispense" means to deliver a controlled substance to an ultimate user or research subject by, or pursuant to the lawful order of, a practitioner, including the prescribing and administering of a controlled substance and the packaging, labeling, or compounding necessary to prepare the substance for such delivery. The term "dispenser" means a practitioner who so delivers a controlled substance to an ultimate user or research subject.

(11) The term "distribute" means to deliver (other than by administering or dispensing) a controlled substance. The term "distributor" means a person who so delivers a controlled substance.

(12) The term "drug" has the meaning given that term by section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act. 52 Stat. 1041; 79 Stat. 234. 21 USC 321.

(13) The term "felony" means any Federal or State offense classified by applicable Federal or State law as a felony.

(14) The term "manufacture" means the production, preparation, propagation, compounding, or processing of a drug or other substance, either directly or indirectly or by extraction from substances of natural origin, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of such substance or labeling or relabeling of its container; except that such term does not include the preparation, compounding, packaging, or labeling of a drug or other substance in conformity with applicable State or local law by a practitioner as an incident to his administration or dispensing of such drug or substance in the course of his professional practice. The term "manufacturer" means a person who manufactures a drug or other substance.

(15) The term "marihuana" means all parts of the plant Cannabis sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin. Such term does not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination.

(16) The term "narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(A) Opium, coca leaves, and opiates.

(B) A compound, manufacture, salt, derivative, or preparation of opium, coca leaves, or opiates.

(C) A substance (and any compound, manufacture, salt, derivative, or preparation thereof) which is chemically identical with any of the substances referred to in clause (A) or (B).

Such term does not include decocainized coca leaves or extracts of coca leaves, which extracts do not contain cocaine or ecgonine.

(17) The term "opiate" means any drug or other substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having such addiction-forming or addiction-sustaining liability.

(18) The term "opium poppy" means the plant of the species Papaver somniferum L., except the seed thereof.

(19) The term "poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(20) The term "practitioner" means a physician, dentist, veterinarian, scientific investigator, pharmacy, hospital, or other person licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he practices or does research, to distribute, dispense, conduct research with respect to, administer, or use in teaching or chemical analysis, a controlled substance in the course of professional practice or research.

(21) The term "production" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance.

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(22) The term "immediate precursor" means a substance—

(A) which the Attorney General has found to be and by regulation designated as being the principal compound used, or produced primarily for use, in the manufacture of a controlled substance;

(B) which is an immediate chemical intermediary used or likely to be used in the manufacture of such controlled substance; and

(C) the control of which is necessary to prevent, curtail, or limit the manufacture of such controlled substance.

(23) The term "Secretary", unless the context otherwise indicates, means the Secretary of Health, Education, and Welfare.

(24) The term "State" means any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and the Canal Zone.

(25) The term "ultimate user" means a person who has lawfully obtained, and who possesses, a controlled substance for his own use or for the use of a member of his household or for an animal owned by him or by a member of his household.

(26) The term "United States", when used in a geographic sense, means all places and waters, continental or insular, subject to the jurisdiction of the United States.

INCREASED NUMBERS OF ENFORCEMENT PERSONNEL

SEC. 103. (a) During the fiscal year 1971, the Bureau of Narcotics and Dangerous Drugs is authorized to add at least 300 agents, together with necessary supporting personnel, to the number of enforcement personnel currently available to it.

Appropriation.

(b) There are authorized to be appropriated not to exceed $6,000,000 for the fiscal year 1971 and for each fiscal year thereafter to carry out the provisions of subsection (a).

PART B—AUTHORITY TO CONTROL; STANDARDS AND SCHEDULES

AUTHORITY AND CRITERIA FOR CLASSIFICATION OF SUBSTANCES

SEC. 201. (a) The Attorney General shall apply the provisions of this title to the controlled substances listed in the schedules established by section 202 of this title and to any other drug or other substance added to such schedules under this title. Except as provided in subsections (d) and (e), the Attorney General may by rule—

(1) add to such a schedule or transfer between such schedules any drug or other substance if he—

(A) finds that such drug or other substance has a potential for abuse, and

(B) makes with respect to such drug or other substance the findings prescribed by subsection (b) of section 202 for the schedule in which such drug is to be placed; or

(2) remove any drug or other substance from the schedules if he finds that the drug or other substance does not meet the requirements for inclusion in any schedule.

Hearing opportunity. Rules. 80 Stat. 381. 5 USC 551.

Rules of the Attorney General under this subsection shall be made on the record after opportunity for a hearing pursuant to the rulemaking procedures prescribed by subchapter II of chapter 5 of title 5 of the United States Code. Proceedings for the issuance, amendment, or

repeal of such rules may be initiated by the Attorney General (1) on his own motion, (2) at the request of the Secretary, or (3) on the petition of any interested party.

Evaluation.

(b) The Attorney General shall, before initiating proceedings under subsection (a) to control a drug or other substance or to remove a drug or other substance entirely from the schedules, and after gathering the necessary data, request from the Secretary a scientific and medical evaluation, and his recommendations, as to whether such drug or other substance should be so controlled or removed as a controlled substance. In making such evaluation and recommendations, the Secretary shall consider the factors listed in paragraphs (2), (3), (6), (7), and (8) of subsection (c) and any scientific or medical considerations involved in paragraphs (1), (4), and (5) of such subsection. The recommendations of the Secretary shall include recommendations with respect to the appropriate schedule, if any, under which such drug or other substance should be listed. The evaluation and the recommendations of the Secretary shall be made in writing and submitted to the Attorney General within a reasonable time. The recommendations of the Secretary to the Attorney General shall be binding on the Attorney General as to such scientific and medical matters, and if the Secretary recommends that a drug or other substance not be controlled, the Attorney General shall not control the drug or other substance. If the Attorney General determines that these facts and all other relevant data constitute substantial evidence of potential for abuse such as to warrant control or substantial evidence that the drug or other substance should be removed entirely from the schedules, he shall initiate proceedings for control or removal, as the case may be, under subsection (a).

(c) In making any finding under subsection (a) of this section or under subsection (b) of section 202, the Attorney General shall consider the following factors with respect to each drug or other substance proposed to be controlled or removed from the schedules:

(1) Its actual or relative potential for abuse.
(2) Scientific evidence of its pharmacological effect, if known.
(3) The state of current scientific knowledge regarding the drug or other substance.
(4) Its history and current pattern of abuse.
(5) The scope, duration, and significance of abuse.
(6) What, if any, risk there is to the public health.
(7) Its psychic or physiological dependence liability.
(8) Whether the substance is an immediate precursor of a substance already controlled under this title.

Order.

(d) If control is required by United States obligations under international treaties, conventions, or protocols in effect on the effective date of this part, the Attorney General shall issue an order controlling such drug under the schedule he deems most appropriate to carry out such obligations, without regard to the findings required by subsection (a) of this section or section 202(b) and without regard to the procedures prescribed by subsections (a) and (b) of this section.

(e) The Attorney General may, without regard to the findings required by subsection (a) of this section or section 202(b) and without regard to the procedures prescribed by subsections (a) and (b) of this section, place an immediate precursor in the same schedule in which the controlled substance of which it is an immediate precursor is placed or in any other schedule with a higher numerical designation. If the Attorney General designates a substance as an immediate precursor and places it in a schedule, other substances shall not be placed in a schedule solely because they are its precursors.

(f) If, at the time a new-drug application is submitted to the Secretary for any drug having a stimulant, depressant, or hallucinogenic effect on the central nervous system, it appears that such drug has an abuse potential, such information shall be forwarded by the Secretary to the Attorney General.

(g)(1) The Attorney General shall by regulation exclude any nonnarcotic substance from a schedule if such substance may, under the Federal Food, Drug, and Cosmetic Act, be lawfully sold over the counter without a prescription.

52 Stat. 1040. 21 USC 321.

Dextromethorphan, exception.

(2) Dextromethorphan shall not be deemed to be included in any schedule by reason of enactment of this title unless controlled after the date of such enactment pursuant to the foregoing provisions of this section.

SCHEDULES OF CONTROLLED SUBSTANCES

Establishment.

SEC. 202. (a) There are established five schedules of controlled substances, to be known as schedules I, II, III, IV, and V. Such schedules shall initially consist of the substances listed in this section. The schedules established by this section shall be updated and republished on a semiannual basis during the two-year period beginning one year after the date of enactment of this title and shall be updated and republished on an annual basis thereafter.

Placement on schedules, findings required.

(b) Except where control is required by United States obligations under an international treaty, convention, or protocol, in effect on the effective date of this part, and except in the case of an immediate precursor, a drug or other substance may not be placed in any schedule unless the findings required for such schedule are made with respect to such drug or other substance. The findings required for each of the schedules are as follows:

(1) SCHEDULE I.—

(A) The drug or other substance has a high potential for abuse.

(B) The drug or other substance has no currently accepted medical use in treatment in the United States.

(C) There is a lack of accepted safety for use of the drug or other substance under medical supervision.

(2) SCHEDULE II.—

(A) The drug or other substance has a high potential for abuse.

(B) The drug or other substance has a currently accepted medical use in treatment in the United States or a currently accepted medical use with severe restrictions.

(C) Abuse of the drug or other substances may lead to severe psychological or physical dependence.

(3) SCHEDULE III.—

(A) The drug or other substance has a potential for abuse less than the drugs or other substances in schedules I and II.

(B) The drug or other substance has a currently accepted medical use in treatment in the United States.

(C) Abuse of the drug or other substance may lead to moderate or low physical dependence or high psychological dependence.

(4) SCHEDULE IV.—

(A) The drug or other substance has a low potential for abuse relative to the drugs or other substances in schedule III.

(B) The drug or other substance has a currently accepted medical use in treatment in the United States.

(C) Abuse of the drug or other substance may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in schedule III.

(5) SCHEDULE V.—

(A) The drug or other substance has a low potential for abuse relative to the drugs or other substances in schedule IV.

(B) The drug or other substance has a currently accepted medical use in treatment in the United States.

(C) Abuse of the drug or other substance may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in schedule IV.

(c) Schedules I, II, III, IV, and V shall, unless and until amended pursuant to section 201, consist of the following drugs or other substances, by whatever official name, common or usual name, chemical name, or brand name designated:

SCHEDULE I

Opiates.

(a) Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

(1) Acetylmethadol.
(2) Allylprodine.
(3) Alphacetylmathadol.
(4) Alphameprodine.
(5) Alphamethadol.
(6) Benzethidine.
(7) Betacetylmethadol.
(8) Betameprodine.
(9) Betamethadol.
(10) Betaprodine.
(11) Clonitazene.
(12) Dextromoramide.
(13) Dextrorphan.
(14) Diampromide.
(15) Diethylthiambutene.
(16) Dimenoxadol.
(17) Dimepheptanol.
(18) Dimethylthiambutene.
(19) Dioxaphetyl butyrate.
(20) Dipipanone.
(21) Ethylmethylthiambutene.
(22) Etonitazene.
(23) Etoxeridine.
(24) Furethidine.
(25) Hydroxypethidine.
(26) Ketobemidone.
(27) Levomoramide.
(28) Levophenacylmorphan.
(29) Morpheridine.
(30) Noracymethadol.
(31) Norlevorphanol.
(32) Normethadone.
(33) Norpipanone.
(34) Phenadoxone.
(35) Phenampromide.

(36) Phenomorphan.
(37) Phenoperidine.
(38) Piritramide.
(39) Proheptazine.
(40) Properidine.
(41) Racemoramide.
(42) Trimeperidine.

Opium derivatives.

(b) Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Acetorphine.
(2) Acetyldihydrocodeine.
(3) Benzylmorphine.
(4) Codeine methylbromide.
(5) Codeine-N-Oxide.
(6) Cyprenorphine.
(7) Desomorphine.
(8) Dihydromorphine.
(9) Etorphine.
(10) Heroin.
(11) Hydromorphinol.
(12) Methyldesorphine.
(13) Methylhydromorphine.
(14) Morphine methylbromide.
(15) Morphine methylsulfonate.
(16) Morphine-N-Oxide.
(17) Myrophine.
(18) Nicocodeine.
(19) Nicomorphine.
(20) Normorphine.
(21) Pholcodine.
(22) Thebacon.

Hallucinogenic substances.

(c) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) 3,4-methylenedioxy amphetamine.
(2) 5-methoxy-3,4-methylenedioxy amphetamine.
(3) 3,4,5-trimethoxy amphetamine.
(4) Bufotenine.
(5) Diethyltryptamine.
(6) Dimethyltryptamine.
(7) 4-methyl-2,5-dimethoxyamphetamine.
(8) Ibogaine.
(9) Lysergic acid diethylamide.
(10) Marihuana.
(11) Mescaline.
(12) Peyote.
(13) N-ethyl-3-piperidyl benzilate.
(14) N-methyl-3-piperidyl benzilate.
(15) Psilocybin.
(16) Psilocyn.
(17) Tetrahydrocannabinols.

SCHEDULE II

Substances, vegetable origin or chemical synthesis.

(a) Unless specifically excepted or unless listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate.

(2) Any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in clause (1), except that these substances shall not include the isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.

(4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, except that the substances shall not include decocainized coca leaves or extraction of coca leaves, which extractions do not contain cocaine or ecgonine.

Opiates.

(b) Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

(1) Alphaprodine.
(2) Anileridine.
(3) Bezitramide.
(4) Dihydrocodeine.
(5) Diphenoxylate.
(6) Fentanyl.
(7) Isomethadone.
(8) Levomethorphan.
(9) Levorphanol.
(10) Metazocine.
(11) Methadone.
(12) Methadone-Intermediate, 4-cyano - 2 - dimethylamino-4,4-diphenyl butane.
(13) Moramide-Intermediate, 2 - methyl - 3 - morpholino-1, 1-diphenylpropane-carboxylic acid.
(14) Pethidine.
(15) Pethidine-Intermediate-A, 4 - cyano-1-methyl-4-phenylpiperidine.
(16) Pethidine-Intermediate-B, ethyl - 4-phenylpiperidine-4-carboxylate.
(17) Pethidine-Intermediate-C, 1-methyl - 4 - phenylpiperidine-4-carboxylic acid.
(18) Phenazocine.
(19) Piminodine.
(20) Racemethorphan.
(21) Racemorphan.

Methamphetamine.

(c) Unless specifically excepted or unless listed in another schedule, any injectable liquid which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers.

SCHEDULE III

Stimulants.

(a) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

(1) Amphetamine, its salts, optical isomers, and salts of its optical isomers.

(2) Phenmetrazine and its salts.

(3) Any substance (except an injectable liquid) which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers.

(4) Methylphenidate.

Depressants.

(b) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system:

(1) Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid.

(2) Chorhexadol.

(3) Glutethimide.

(4) Lysergic acid.

(5) Lysergic acid amide.

(6) Methyprylon.

(7) Phencyclidine.

(8) Sulfondiethylmethane.

(9) Sulfonethylmethane.

(10) Sulfonmethane.

Nalorphine.

(c) Nalorphine.

Narcotic drugs.

(d) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

(1) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium.

(2) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(3) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium.

(4) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(5) Not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(6) Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(7) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(8) Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

SCHEDULE IV

(1) Barbital.
(2) Chloral betaine.
(3) Chloral hydrate.
(4) Ethchlorvynol.
(5) Ethinamate.
(6) Methohexital.
(7) Meprobamate.
(8) Methylphenobarbital.
(9) Paraldehyde.
(10) Petrichloral.
(11) Phenobarbital.

SCHEDULE V

Narcotic drugs containing nonnarcotic active medicinal ingredients.

Any compound, mixture, or preparation containing any of the following limited quantities of narcotic drugs, which shall include one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

(1) Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams.

(2) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams.

(3) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams.

(4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.

(5) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.

Stimulants or depressants containing active medicinal ingredients, exception.

(d) The Attorney General may by regulation except any compound, mixture, or preparation containing any depressant or stimulant substance in paragraph (a) or (b) of schedule III or in schedule IV or V from the application of all or any part of this title if (1) the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant or stimulant effect on the central nervous system, and (2) such ingredients are included therein in such combinations, quantity, proportion, or concentration as to vitiate the potential for abuse of the substances which do have a depressant or stimulant effect on the central nervous system.

PART C—REGISTRATION OF MANUFACTURERS, DISTRIBUTORS, AND DISPENSERS OF CONTROLLED SUBSTANCES

RULES AND REGULATIONS

Rules and regulations.

SEC. 301. The Attorney General is authorized to promulgate rules and regulations and to charge reasonable fees relating to the registration and control of the manufacture, distribution, and dispensing of controlled substances.

PERSONS REQUIRED TO REGISTER

Annual registration.

SEC. 302. (a) Every person who manufactures, distributes, or dispenses any controlled substance or who proposes to engage in the manufacture, distribution, or dispensing of any controlled substance, shall obtain annually a registration issued by the Attorney General in accordance with the rules and regulations promulgated by him.

(b) Persons registered by the Attorney General under this title to manufacture, distribute, or dispense controlled substances are authorized to possess, manufacture, distribute, or dispense such substances (including any such activity in the conduct of research) to the extent authorized by their registration and in conformity with the other provisions of this title.

Registration, exceptions.

(c) The following persons shall not be required to register and may lawfully possess any controlled substance under this title:

(1) An agent or employee of any registered manufacturer, distributor, or dispenser of any controlled substance if such agent or employee is acting in the usual course of his business or employment.

(2) A common or contract carrier or warehouseman, or an employee thereof, whose possession of the controlled substance is in the usual course of his business or employment.

Ante, p. 1245.

(3) An ultimate user who possesses such substance for a purpose specified in section 102(25).

Waiver.

(d) The Attorney General may, by regulation, waive the requirement for registration of certain manufacturers, distributors, or dispensers if he finds it consistent with the public health and safety.

Separate registration.

(e) A separate registration shall be required at each principal place of business or professional practice where the applicant manufactures, distributes, or dispenses controlled substances.

Inspection.

(f) The Attorney General is authorized to inspect the establishment of a registrant or applicant for registration in accordance with the rules and regulations promulgated by him.

REGISTRATION REQUIREMENTS

Factors consistent with public interest.

SEC. 303. (a) The Attorney General shall register an applicant to manufacture controlled substances in schedule I or II if he determines that such registration is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on the effective date of this part. In determining the public interest, the following factors shall be considered:

Controls. Importation and bulk manufacture, limitation.

(1) maintenance of effective controls against diversion of particular controlled substances and any controlled substance in schedule I or II compounded therefrom into other than legitimate medical, scientific, research, or industrial channels, by limiting the importation and bulk manufacture of such controlled substances to a number of establishments which can produce an adequate and uninterrupted supply of these substances under adequately com-

petitive conditions for legitimate medical, scientific, research, and industrial purposes;

(2) compliance with applicable State and local law; Compliance.

(3) promotion of technical advances in the art of manufacturing these substances and the development of new substances; Technology.

(4) prior conviction record of applicant under Federal and State laws relating to the manufacture, distribution, or dispensing of such substances; Applicants, prior conviction record.

(5) past experience in the manufacture of controlled substances, and the existence in the establishment of effective control against diversion; and Experience.

(6) such other factors as may be relevant to and consistent with the public health and safety.

(b) The Attorney General shall register an applicant to distribute a controlled substance in schedule I or II unless he determines that the issuance of such registration is inconsistent with the public interest. In determining the public interest, the following factors shall be considered: Factors consistent to public interest.

(1) maintenance of effective control against diversion of particular controlled substances into other than legitimate medical, scientific, and industrial channels;

(2) compliance with applicable State and local law;

(3) prior conviction record of applicant under Federal or State laws relating to the manufacture, distribution, or dispensing of such substances;

(4) past experience in the distribution of controlled substances; and

(5) such other factors as may be relevant to and consistent with the public health and safety.

(c) Registration granted under subsections (a) and (b) of this section shall not entitle a registrant to (1) manufacture or distribute controlled substances in schedule I or II other than those specified in the registration, or (2) manufacture any quantity of those controlled substances in excess of the quota assigned pursuant to section 306. Prohibition.

Post, p. 1257.

(d) The Attorney General shall register an applicant to manufacture controlled substances in schedule III, IV, or V, unless he determines that the issuance of such registration is inconsistent with the public interest. In determining the public interest, the following factors shall be considered:

(1) maintenance of effective controls against diversion of particular controlled substances and any controlled substance in schedule III, IV, or V compounded therefrom into other than legitimate medical, scientific, or industrial channels;

(2) compliance with applicable State and local law;

(3) promotion of technical advances in the art of manufacturing these substances and the development of new substances;

(4) prior conviction record of applicant under Federal or State laws relating to the manufacture, distribution, or dispensing of such substances;

(5) past experience in the manufacture, distribution, and dispensing of controlled substances, and the existence in the establishment of effective controls against diversion; and

(6) such other factors as may be relevant to and consistent with the public health and safety.

(e) The Attorney General shall register an applicant to distribute controlled substances in schedule III, IV, or V, unless he determines that the issuance of such registration is inconsistent with the public interest. In determining the public interest, the following factors shall be considered:

(1) maintenance of effective controls against diversion of particular controlled substances into other than legitimate medical, scientific, and industrial channels;

(2) compliance with applicable State and local law;

(3) prior conviction record of applicant under Federal or State laws relating to the manufacture, distribution, or dispensing of such substances;

(4) past experience in the distribution of controlled substances; and

(5) such other factors as may be relevant to and consistent with the public health and safety.

Research.

(f) Practitioners shall be registered to dispense or conduct research with controlled substances in schedule II, III, IV, or V if they are authorized to dispense or conduct research under the law of the State in which they practice. Separate registration under this part for practitioners engaging in research with nonnarcotic controlled substances in schedule II, III, IV, or V, who are already registered under this part in another capacity, shall not be required. Pharmacies (as distinguished from pharmacists) when engaged in commercial activities, shall be registered to dispense controlled substances in schedule II, III, IV, or V if they are authorized to dispense under the law of the State in which they regularly conduct business. Registration applications by practitioners wishing to conduct research with controlled substances in schedule I shall be referred to the Secretary, who shall determine qualifications and competency of each practitioner requesting registration, as well as the merits of the research protocol. The Secretary, in determining the merits of each research protocol, shall consult with the Attorney General as to effective procedures to adequately safeguard against diversion of such controlled substances from legitimate medical or scientific use. Registration for the purpose of bona fide research with controlled substances in schedule I by a practitioner deemed qualified by the Secretary may be denied by the Attorney General only on a ground specified in section 304(a).

Pharmacies.

Research applications.

DENIAL, REVOCATION, OR SUSPENSION OF REGISTRATION

SEC. 304. (a) A registration pursuant to section 303 to manufacture, distribute, or dispense a controlled substance may be suspended or revoked by the Attorney General upon a finding that the registrant—

(1) has materially falsified any application filed pursuant to or required by this title or title III;

(2) has been convicted of a felony under this title or title III or any other law of the United States, or of any State, relating to any substance defined in this title as a controlled substance; or

(3) has had his State license or registration suspended, revoked, or denied by competent State authority and is no longer authorized by State law to engage in the manufacturing, distribution, or dispensing of controlled substances.

Post, p. 1285.

(b) The Attorney General may limit revocation or suspension of a registration to the particular controlled substance with respect to which grounds for revocation or suspension exist.

Service of order.

(c) Before taking action pursuant to this section, or pursuant to a denial of registration under section 303, the Attorney General shall serve upon the applicant or registrant an order to show cause why registration should not be denied, revoked, or suspended. The order to show cause shall contain a statement of the basis thereof and shall call upon the applicant or registrant to appear before the Attorney

General at a time and place stated in the order, but in no event less than thirty days after the date of receipt of the order. Proceedings to deny, revoke, or suspend shall be conducted pursuant to this section in accordance with subchapter II of chapter 5 of title 5 of the United States Code. Such proceedings shall be independent of, and not in lieu of, criminal prosecutions or other proceedings under this title or any other law of the United States. 80 Stat. 381. 5 USC 551.

(d) The Attorney General may, in his discretion, suspend any registration simultaneously with the institution of proceedings under this section, in cases where he finds that there is an imminent danger to the public health or safety. Such suspension shall continue in effect until the conclusion of such proceedings, including judicial review thereof, unless sooner withdrawn by the Attorney General or dissolved by a court of competent jurisdiction. Registration, suspension.

(e) The suspension or revocation of a registration under this section shall operate to suspend or revoke any quota applicable under section 306.

(f) In the event the Attorney General suspends or revokes a registration granted under section 303, all controlled substances owned or possessed by the registrant pursuant to such registration at the time of suspension or the effective date of the revocation order, as the case may be, may, in the discretion of the Attorney General, be placed under seal. No disposition may be made of any controlled substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded except that a court, upon application therefor, may at any time order the sale of perishable controlled substances. Any such order shall require the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all such controlled substances (or proceeds of sale deposited in court) shall be forfeited to the United States; and the Attorney General shall dispose of such controlled substances in accordance with section 511(e). Post, p. 1277.

LABELING AND PACKAGING REQUIREMENTS

SEC. 305. (a) It shall be unlawful to distribute a controlled substance in a commercial container unless such container, when and as required by regulations of the Attorney General, bears a label (as defined in section 201(k) of the Federal Food, Drug, and Cosmetic Act) containing an identifying symbol for such substance in accordance with such regulations. A different symbol shall be required for each schedule of controlled substances. Symbol. 52 Stat. 1041. 21 USC 321.

(b) It shall be unlawful for the manufacturer of any controlled substance to distribute such substance unless the labeling (as defined in section 201(m) of the Federal Food, Drug, and Cosmetic Act) of such substance contains, when and as required by regulations of the Attorney General, the identifying symbol required under subsection (a).

(c) The Secretary shall prescribe regulations under section 503(b) of the Federal Food, Drug, and Cosmetic Act which shall provide that the label of a drug listed in schedule II, III, or IV shall, when dispensed to or for a patient, contain a clear, concise warning that it is a crime to transfer the drug to any person other than the patient. 65 Stat. 648. 21 USC 353.

(d) It shall be unlawful to distribute controlled substances in schedule I or II, and narcotic drugs in schedule III or IV, unless the bottle or other container, stopper, covering, or wrapper thereof is securely sealed as required by regulations of the Attorney General. Unlawful distribution.

QUOTAS APPLICABLE TO CERTAIN SUBSTANCES

Production quota.

SEC. 306. (a) The Attorney General shall determine the total quantity and establish production quotas for each basic class of controlled substance in schedules I and II to be manufactured each calendar year to provide for the estimated medical, scientific, research, and industrial needs of the United States, for lawful export requirements, and for the establishment and maintenance of reserve stocks. Production quotas shall be established in terms of quantities of each basic class of controlled substance and not in terms of individual pharmaceutical dosage forms prepared from or containing such a controlled substance.

(b) The Attorney General shall limit or reduce individual production quotas to the extent necessary to prevent the aggregate of individual quotas from exceeding the amount determined necessary each year by the Attorney General under subsection (a). The quota of each registered manufacturer for each basic class of controlled substance in schedule I or II shall be revised in the same proportion as the limitation or reduction of the aggregate of the quotas. However, if any registrant, before the issuance of a limitation or reduction in quota, has manufactured in excess of his revised quota, the amount of the excess shall be subtracted from his quota for the following year.

Manufacturing quota.

(c) On or before July 1 of each year, upon application therefor by a registered manufacturer, the Attorney General shall fix a manufacturing quota for the basic classes of controlled substances in schedules I and II that the manufacturer seeks to produce. The quota shall be subject to the provisions of subsections (a) and (b) of this section. In fixing such quotas, the Attorney General shall determine the manufacturer's estimated disposal, inventory, and other requirements for the calendar year; and, in making his determination, the Attorney General shall consider the manufacturer's current rate of disposal, the trend of the national disposal rate during the preceding calendar year, the manufacturer's production cycle and inventory position, the economic availability of raw materials, yield and stability problems, emergencies such as strikes and fires, and other factors.

(d) The Attorney General shall, upon application and subject to the provisions of subsections (a) and (b) of this section, fix a quota for a basic class of controlled substance in schedule I or II for any registrant who has not manufactured that basic class of controlled substance during one or more preceding calendar years. In fixing such quota, the Attorney General shall take into account the registrant's reasonably anticipated requirements for the current year; and, in making his determination of such requirements, he shall consider such factors specified in subsection (c) of this section as may be relevant.

Quota, increase.

(e) At any time during the year any registrant who has applied for or received a manufacturing quota for a basic class of controlled substance in schedule I or II may apply for an increase in that quota to meet his estimated disposal, inventory, and other requirements during the remainder of that year. In passing upon the application the Attorney General shall take into consideration any occurrences since the filing of the registrant's initial quota application that may require an increased manufacturing rate by the registrant during the balance of the year. In passing upon the application the Attorney General may also take into account the amount, if any, by which the determination of the Attorney General under subsection (a) of this section exceeds the aggregate of the quotas of all registrants under this section.

Controlled substances, incidental production, exception.

(f) Notwithstanding any other provisions of this title, no registration or quota may be required for the manufacture of such quantities of controlled substances in schedules I and II as incidentally and

necessarily result from the manufacturing process used for the manufacture of a controlled substance with respect to which its manufacturer is duly registered under this title. The Attorney General may, by regulation, prescribe restrictions on the retention and disposal of such incidentally produced substances. Restrictions.

RECORDS AND REPORTS OF REGISTRANTS

SEC. 307. (a) Except as provided in subsection (c)— Inventory.

(1) every registrant under this title shall, on the effective date of this section, or as soon thereafter as such registrant first engages in the manufacture, distribution, or dispensing of controlled substances, and every second year thereafter, make a complete and accurate record of all stocks thereof on hand, except that the regulations prescribed under this section shall permit each such biennial inventory (following the initial inventory required by this paragraph) to be prepared on such registrant's regular general physical inventory date (if any) which is nearest to and does not vary by more than six months from the biennial date that would otherwise apply;

(2) on the effective date of each regulation of the Attorney General controlling a substance that immediately prior to such date was not a controlled substance, each registrant under this title manufacturing, distributing, or dispensing such substance shall make a complete and accurate record of all stocks thereof on hand; and

(3) on and after the effective date of this section, every registrant under this title manufacturing, distributing, or dispensing a controlled substance or substances shall maintain, on a current basis, a complete and accurate record of each such substance manufactured, received, sold, delivered, or otherwise disposed of by him, except that this paragraph shall not require the maintenance of a perpetual inventory.

(b) Every inventory or other record required under this section (1) shall be in accordance with, and contain such relevant information as may be required by, regulations of the Attorney General, (2) shall (A) be maintained separately from all other records of the registrant, or (B) alternatively, in the case of nonnarcotic controlled substances, be in such form that information required by the Attorney General is readily retrievable from the ordinary business records of the registrant, and (3) shall be kept and be available, for at least two years, for inspection and copying by officers or employees of the United States authorized by the Attorney General. Availability.

(c) The foregoing provisions of this section shall not apply— Nonapplicability.

(1)(A) with respect to narcotic controlled substances in schedule II, III, IV, or V, to the prescribing or administering of such substances by a practitioner in the lawful course of his professional practice; or

(B) with respect to nonnarcotic controlled substances in schedule II, III, IV, or V, to any practitioner who dispenses such substances to his patients, unless the practitioner is regularly engaged in charging his patients, either separately or together with charges for other professional services, for substances so dispensed;

(2)(A) to the use of controlled substances, at establishments registered under this title which keep records with respect to such substances, in research conducted in conformity with an exemption granted under section 505(i) or 512(j) of the Federal Food, Drug, and Cosmetic Act; 52 Stat. 1052; 76 Stat. 783. 82 Stat. 343. 21 USC 355, 360b.

(B) to the use of controlled substances, at establishments registered under this title which keep records with respect to such substances, in preclinical research or in teaching; or

(3) to the extent of any exemption granted to any person, with respect to all or part of such provisions, by the Attorney General by or pursuant to regulation on the basis of a finding that the application of such provisions (or part thereof) to such person is not necessary for carrying out the purposes of this title.

(d) Every manufacturer registered under section 303 shall, at such time or times and in such form as the Attorney General may require, make periodic reports to the Attorney General of every sale, delivery, or other disposal by him of any controlled substance, and each distributor shall make such reports with respect to narcotic controlled substances, identifying by the registration number assigned under this title the person or establishment (unless exempt from registration under section 302(d)) to whom such sale, delivery, or other disposal was made.

52 Stat. 1052; 76 Stat. 783. 82 Stat. 343. 21 USC 355, 360b.

(e) Regulations under sections 505(i) and 512(j) of the Federal Food, Drug, and Cosmetic Act, relating to investigational use of drugs, shall include such procedures as the Secretary, after consultation with the Attorney General, determines are necessary to insure the security and accountability of controlled substances used in research to which such regulations apply.

ORDER FORMS

Unlawful distribution.

SEC. 308. (a) It shall be unlawful for any person to distribute a controlled substance in schedule I or II to another except in pursuance of a written order of the person to whom such substance is distributed, made on a form to be issued by the Attorney General in blank in accordance with subsection (d) and regulations prescribed by him pursuant to this section.

Nonapplicability.

(b) Nothing in subsection (a) shall apply to—

(1) the exportation of such substances from the United States in conformity with title III;

Post, p. 1285.

(2) the delivery of such a substance to or by a common or contract carrier for carriage in the lawful and usual course of its business, or to or by a warehouseman for storage in the lawful and usual course of its business; but where such carriage or storage is in connection with the distribution by the owner of the substance to a third person, this paragraph shall not relieve the distributor from compliance with subsection (a).

Preservation and availability.

(c)(1) Every person who in pursuance of an order required under subsection (a) distributes a controlled substance shall preserve such order for a period of two years, and shall make such order available for inspection and copying by officers and employees of the United States duly authorized for that purpose by the Attorney General, and by officers or employees of States or their political subdivisions who are charged with the enforcement of State or local laws regulating the production, or regulating the distribution or dispensing, of controlled substances and who are authorized under such laws to inspect such orders.

Duplicate, preservation and availability.

(2) Every person who gives an order required under subsection (a) shall, at or before the time of giving such order, make or cause to be made a duplicate thereof on a form to be issued by the Attorney General in blank in accordance with subsection (d) and regulations prescribed by him pursuant to this section, and shall, if such order is accepted, preserve such duplicate for a period of two years and make it available for inspection and copying by the officers and employees mentioned in paragraph (1) of this subsection.

(d)(1) The Attorney General shall issue forms pursuant to subsections (a) and (c)(2) only to persons validly registered under section 303 (or exempted from registration under section 302(d)). Whenever any such form is issued to a person, the Attorney General shall, before delivery thereof, insert therein the name of such person, and it shall be unlawful for any other person (A) to use such form for the purpose of obtaining controlled substances or (B) to furnish such form to any person with intent thereby to procure the distribution of such substances. Forms, issuance.

(2) The Attorney General may charge reasonable fees for the issuance of such forms in such amounts as he may prescribe for the purpose of covering the cost to the United States of issuing such forms, and other necessary activities in connection therewith. Fees.

(e) It shall be unlawful for any person to obtain by means of order forms issued under this section controlled substances for any purpose other than their use, distribution, dispensing, or administration in the conduct of a lawful business in such substances or in the course of his professional practice or research. Unlawful act.

PRESCRIPTIONS

SEC. 309. (a) Except when dispensed directly by a practitioner, other than a pharmacist, to an ultimate user, no controlled substance in schedule II, which is a prescription drug as determined under the Federal Food, Drug, and Cosmetic Act, may be dispensed without the written prescription of a practitioner, except that in emergency situations, as prescribed by the Secretary by regulation after consultation with the Attorney General, such drug may be dispensed upon oral prescription in accordance with section 503(b) of that Act. Prescriptions shall be retained in conformity with the requirements of section 307 of this title. No prescription for a controlled substance in schedule II may be refilled. 52 Stat. 1040. 21 USC 301. 65 Stat. 648. 21 USC 353.

(b) Except when dispensed directly by a practitioner, other than a pharmacist, to an ultimate user, no controlled substance in schedule III or IV, which is a prescription drug as determined under the Federal Food, Drug, and Cosmetic Act, may be dispensed without a written or oral prescription in conformity with section 503(b) of that Act. Such prescriptions may not be filled or refilled more than six months after the date thereof or be refilled more than five times after the date of the prescription unless renewed by the practitioner.

(c) No controlled substance in schedule V which is a drug may be distributed or dispensed other than for a medical purpose.

(d) Whenever it appears to the Attorney General that a drug not considered to be a prescription drug under the Federal Food, Drug, and Cosmetic Act should be so considered because of its abuse potential, he shall so advise the Secretary and furnish to him all available data relevant thereto.

PART D—OFFENSES AND PENALTIES

PROHIBITED ACTS A—PENALTIES

SEC. 401. (a) Except as authorized by this title, it shall be unlawful for any person knowingly or intentionally—

(1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance; or

(2) to create, distribute, or dispense, or possess with intent to distribute or dispense, a counterfeit substance.

(b) Except as otherwise provided in section 405, any person who violates subsection (a) of this section shall be sentenced as follows:

Post, p. 1265.

Penalties.

(1)(A) In the case of a controlled substance in schedule I or II which is a narcotic drug, such person shall be sentenced to a term of imprisonment of not more than 15 years, a fine of not more than $25,000, or both. If any person commits such a violation after one or more prior convictions of him for an offense punishable under this paragraph, or for a felony under any other provision of this title or title III or other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 30 years, a fine of not more than $50,000, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a special parole term of at least 3 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 6 years in addition to such term of imprisonment.

Post, p. 1285.

Special parole term.

(B) In the case of a controlled substance in schedule I or II which is not a narcotic drug or in the case of any controlled substance in schedule III, such person shall be sentenced to a term of imprisonment of not more than 5 years, a fine of not more than $15,000, or both. If any person commits such a violation after one or more prior convictions of him for an offense punishable under this paragraph, or for a felony under any other provision of this title or title III or other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 10 years, a fine of not more than $30,000, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a special parole term of at least 2 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 4 years in addition to such term of imprisonment.

(2) In the case of a controlled substance in schedule IV, such person shall be sentenced to a term of imprisonment of not more than 3 years, a fine of not more than $10,000, or both. If any person commits such a violation after one or more prior convictions of him for an offense punishable under this paragraph, or for a felony under any other provision of this title or title III or other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 6 years, a fine of not more than $20,000, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a special parole term of at least one year in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 2 years in addition to such term of imprisonment.

(3) In the case of a controlled substance in schedule V, such person shall be sentenced to a term of imprisonment of not more than one year, a fine of not more than $5,000, or both. If any person commits such a violation after one or more convictions of him for an offense punishable under this paragraph, or for a crime under any other provision of this title or title III or other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 2 years, a fine of not more than $10,000, or both.

(4) Notwithstanding paragraph (1)(B) of this subsection, any person who violates subsection (a) of this section by distributing a small amount of marihuana for no remuneration shall be treated as provided in subsections (a) and (b) of section 404. Marihuana, simple possession.

(c) A special parole term imposed under this section or section 405 may be revoked if its terms and conditions are violated. In such circumstances the original term of imprisonment shall be increased by the period of the special parole term and the resulting new term of imprisonment shall not be diminished by the time which was spent on special parole. A person whose special parole term has been revoked may be required to serve all or part of the remainder of the new term of imprisonment. A special parole term provided for in this section or section 405 shall be in addition to, and not in lieu of, any other parole provided for by law. Special parole term.

PROHIBITED ACTS B—PENALTIES

SEC. 402. (a) It shall be unlawful for any person—

(1) who is subject to the requirements of part C to distribute or dispense a controlled substance in violation of section 309;

(2) who is a registrant to distribute or dispense a controlled substance not authorized by his registration to another registrant or other authorized person or to manufacture a controlled substance not authorized by his registration;

(3) who is a registrant to distribute a controlled substance in violation of section 305 of this title;

(4) to remove, alter, or obliterate a symbol or label required by section 305 of this title;

(5) to refuse or fail to make, keep, or furnish any record, report, notification, declaration, order or order form, statement, invoice, or information required under this title or title III; Post, p. 1285.

(6) to refuse any entry into any premises or inspection authorized by this title or title III;

(7) to remove, break, injure, or deface a seal placed upon controlled substances pursuant to section 304(f) or 511 or to remove or dispose of substances so placed under seal; or Ante, p. 1256. Post, p. 1276.

(8) to use, to his own advantage, or to reveal, other than to duly authorized officers or employees of the United States, or to the courts when relevant in any judicial proceeding under this title or title III, any information acquired in the course of an inspection authorized by this title concerning any method or process which as a trade secret is entitled to protection.

(b) It shall be unlawful for any person who is a registrant to manufacture a controlled substance in schedule I or II which is—

(1) not expressly authorized by his registration and by a quota assigned to him pursuant to section 306; or

(2) in excess of a quota assigned to him pursuant to section 306.

(c)(1) Except as provided in paragraph (2), any person who violates this section shall, with respect to any such violation, be subject to a civil penalty of not more than $25,000. The district courts of the United States (or, where there is no such court in the case of any territory or possession of the United States, then the court in such territory or possession having the jurisdiction of a district court of the United States in cases arising under the Constitution and laws of the United States) shall have jurisdiction in accordance with section 1355 of title 28 of the United States Code to enforce this paragraph. Penalty. Jurisdiction of courts. 62 Stat. 934.

(2)(A) If a violation of this section is prosecuted by an information or indictment which alleges that the violation was committed knowingly and the trier of fact specifically finds that the violation was so committed, such person shall, except as otherwise provided in subparagraph (B) of this paragraph, be sentenced to imprisonment of not more than one year or a fine of not more than $25,000, or both.

Penalty.

(B) If a violation referred to in subparagraph (A) was committed after one or more prior convictions of the offender for an offense punishable under this paragraph (2), or for a crime under any other provision of this title or title III or other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 2 years, a fine of $50,000, or both.

Post, p. 1285.

Penalty.

(3) Except under the conditions specified in paragraph (2) of this subsection, a violation of this section does not constitute a crime, and a judgment for the United States and imposition of a civil penalty pursuant to paragraph (1) shall not give rise to any disability or legal disadvantage based on conviction for a criminal offense.

Exception.

PROHIBITED ACTS C—PENALTIES

SEC. 403. (a) It shall be unlawful for any person knowingly or intentionally—

(1) who is a registrant to distribute a controlled substance classified in schedule I or II, in the course of his legitimate business, except pursuant to an order or an order form as required by section 308 of this title;

Ante, p. 1259.

(2) to use in the course of the manufacture or distribution of a controlled substance a registration number which is fictitious, revoked, suspended, or issued to another person;

(3) to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge;

(4) to furnish false or fraudulent material information in, or omit any material information from, any application, report, record, or other document required to be made, kept, or filed under this title or title III; or

(5) to make, distribute, or possess any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render such drug a counterfeit substance.

(b) It shall be unlawful for any person knowingly or intentionally to use any communication facility in committing or in causing or facilitating the commission of any act or acts constituting a felony under any provision of this title or title III. Each separate use of a communication facility shall be a separate offense under this subsection. For purposes of this subsection, the term "communication facility" means any and all public and private instrumentalities used or useful in the transmission of writing, signs, signals, pictures, or sounds of all kinds and includes mail, telephone, wire, radio, and all other means of communication.

"Communication facility."

Penalty.

(c) Any person who violates this section shall be sentenced to a term of imprisonment of not more than 4 years, a fine of not more than $30,000, or both; except that if any person commits such a violation after one or more prior convictions of him for violation of this section, or for a felony under any other provision of this title or title III or other law of the United States relating to narcotic drugs,

marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 8 years, a fine of not more than $60,000, or both. Penalty.

PENALTY FOR SIMPLE POSSESSION; CONDITIONAL DISCHARGE AND EXPUNGING OF RECORDS FOR FIRST OFFENSE

SEC. 404. (a) It shall be unlawful for any person knowingly or intentionally to possess a controlled substance unless such substance was obtained directly, or pursuant to a valid prescription or order, from a practitioner, while acting in the course of his professional practice, or except as otherwise authorized by this title or title III. Post, p. 1285. Any person who violates this subsection shall be sentenced to a term of imprisonment of not more than one year, a fine of not more than $5,000, or both, except that if he commits such offense after a prior conviction or convictions under this subsection have become final, he shall be sentenced to a term of imprisonment of not more than 2 years, a fine of not more than $10,000, or both.

(b)(1) If any person who has not previously been convicted of violating subsection (a) of this section, any other provision of this title or title III, or any other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances, is found guilty of a violation of subsection (a) of this section after trial or upon a plea of guilty, the court may, without entering a judgment of guilty and with the consent of such person, defer further proceedings and place him on probation upon such reasonable conditions as it may require and for such period, not to exceed one year, as the court may prescribe. Upon violation of a condition of the probation, the court may enter an adjudication of guilt and proceed as otherwise provided. The court may, in its discretion, dismiss the proceedings against such person and discharge him from probation before the expiration of the maximum period prescribed for such person's probation. If during the period of his probation such person does not violate any of the conditions of the probation, then upon expiration of such period the court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal under this subsection shall be without court adjudication of guilt, but a nonpublic record thereof shall be retained by the Department of Justice solely for the purpose of use by the courts in determining whether or not, in subsequent proceedings, such person qualifies under this subsection. Such discharge or dismissal shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime (including the penalties prescribed under this part for second or subsequent convictions) or for any other purpose. Discharge and dismissal under this section may occur only once with respect to any person. Nonpublic record, retention.

(2) Upon the dismissal of such person and discharge of the proceedings against him under paragraph (1) of this subsection, such person, if he was not over twenty-one years of age at the time of the offense, may apply to the court for an order to expunge from all official records (other than the nonpublic records to be retained by the Department of Justice under paragraph (1)) all recordation relating to his arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. If the court determines, after hearing, that such person was dismissed and the proceedings against him discharged and that he was not over twenty-one years of age at the time of the offense, it shall enter such order. First offense, expunging of records, order.

The effect of such order shall be to restore such person, in the contemplation of the law, to the status he occupied before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.

DISTRIBUTION TO PERSONS UNDER AGE TWENTY-ONE

SEC. 405. (a) Any person at least eighteen years of age who violates section 401(a)(1) by distributing a controlled substance to a person under twenty-one years of age is (except as provided in subsection (b)) punishable by (1) a term of imprisonment, or a fine, or both, up to twice that authorized by section 401(b), and (2) at least twice any special parole term authorized by section 401(b), for a first offense involving the same controlled substance and schedule.

(b) Any person at least eighteen years of age who violates section 401(a)(1) by distributing a controlled substance to a person under twenty-one years of age after a prior conviction or convictions under subsection (a) of this section (or under section 303(b)(2) of the Federal Food, Drug, and Cosmetic Act as in effect prior to the effective date of section 701(b) of this Act) have become final, is punishable by (1) a term of imprisonment, or a fine, or both, up to three times that authorized by section 401(b), and (2) at least three times any special parole term authorized by section 401(b), for a second or subsequent offense involving the same controlled substance and schedule.

82 Stat. 1361.
21 USC 333.

ATTEMPT AND CONSPIRACY

SEC. 406. Any person who attempts or conspires to commit any offense defined in this title is punishable by imprisonment or fine or both which may not exceed the maximum punishment prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

ADDITIONAL PENALTIES

SEC. 407. Any penalty imposed for violation of this title shall be in addition to, and not in lieu of, any civil or administrative penalty or sanction authorized by law.

CONTINUING CRIMINAL ENTERPRISE

SEC. 408. (a)(1) Any person who engages in a continuing criminal enterprise shall be sentenced to a term of imprisonment which may not be less than 10 years and which may be up to life imprisonment, to a fine of not more than $100,000, and to the forfeiture prescribed in paragraph (2); except that if any person engages in such activity after one or more prior convictions of him under this section have become final, he shall be sentenced to a term of imprisonment which may not be less than 20 years and which may be up to life imprisonment, to a fine of not more than $200,000, and to the forfeiture prescribed in paragraph (2).

Penalty.

(2) Any person who is convicted under paragraph (1) of engaging in a continuing criminal enterprise shall forfeit to the United States—

Forfeiture.

(A) the profits obtained by him in such enterprise, and

(B) any of his interest in, claim against, or property or contractual rights of any kind affording a source of influence over, such enterprise.

(b) For purposes of subsection (a), a person is engaged in a continuing criminal enterprise if—

(1) he violates any provision of this title or title III the punishment for which is a felony, and

Post, p. 1285.

(2) such violation is a part of a continuing series of violations of this title or title III—

(A) which are undertaken by such person in concert with five or more other persons with respect to whom such person occupies a position of organizer, a supervisory position, or any other position of management, and

(B) from which such person obtains substantial income or resources.

(c) In the case of any sentence imposed under this section, imposition or execution of such sentence shall not be suspended, probation shall not be granted, and section 4202 of title 18 of the United States Code and the Act of July 15, 1932 (D.C. Code, secs. 24-203—24-207), shall not apply.

65 Stat. 150.
47 Stat. 697;
61 Stat. 378;
67 Stat. 91;
79 Stat. 113.

(d) The district courts of the United States (including courts in the territories or possessions of the United States having jurisdiction under subsection (a)) shall have jurisdiction to enter such restraining orders or prohibitions, or to take such other actions, including the acceptance of satisfactory performance bonds, in connection with any property or other interest subject to forfeiture under this section, as they shall deem proper.

Jurisdiction of courts.

DANGEROUS SPECIAL DRUG OFFENDER SENTENCING

SEC. 409. (a) Whenever a United States attorney charged with the prosecution of a defendant in a court of the United States for an alleged felonious violation of any provision of this title or title III committed when the defendant was over the age of twenty-one years has reasons to believe that the defendant is a dangerous special drug offender such United States attorney, a reasonable time before trial or acceptance by the court of a plea of guilty or nolo contendere, may sign and file with the court, and may amend, a notice (1) specifying that the defendant is a dangerous special drug offender who upon conviction for such felonious violation is subject to the imposition of a sentence under subsection (b) of this section, and (2) setting out with particularity the reasons why such attorney believes the defendant to be a dangerous special drug offender. In no case shall the fact that the defendant is alleged to be a dangerous special drug offender be an issue upon the trial of such felonious violation, be disclosed to the jury, or be disclosed before any plea of guilty or nolo contendere or verdict or finding of guilty to the presiding judge without the consent of the parties. If the court finds that the filing of the notice as a public record may prejudice fair consideration of a pending criminal matter, it may order the notice sealed and the notice shall not be subject to subpena or public inspection during the pendency of such criminal matter, except on order of the court, but shall be subject to inspection by the defendant alleged to be a dangerous special drug offender and his counsel.

Notice.

Prohibition.

(b) Upon any plea of guilty or nolo contendere or verdict or finding of guilty of the defendant of such felonious violation, a hearing shall be held, before sentence is imposed, by the court sitting without a jury.

Hearing without jury.

Notice.

Presentence report, inspection.

Penalty.

Sentence.

The court shall fix a time for the hearing, and notice thereof shall be given to the defendant and the United States at least ten days prior thereto. The court shall permit the United States and counsel for the defendant, or the defendant if he is not represented by counsel, to inspect the presentence report sufficiently prior to the hearing as to afford a reasonable opportunity for verification. In extraordinary cases, the court may withhold material not relevant to a proper sentence, diagnostic opinion which might seriously disrupt a program of rehabilitation, any source of information obtained on a promise of confidentiality, and material previously disclosed in open court. A court withholding all or part of a presentence report shall inform the parties of its action and place in the record the reasons therefor. The court may require parties inspecting all or part of a presentence report to give notice of any part thereof intended to be controverted. In connection with the hearing, the defendant and the United States shall be entitled to assistance of counsel, compulsory process, and cross-examination of such witnesses as appear at the hearing. A duly authenticated copy of a former judgment or commitment shall be prima facie evidence of such former judgment or commitment. If it appears by a preponderance of the information, including information submitted during the trial of such felonious violation and the sentencing hearing and so much of the presentence report as the court relies upon, that the defendant is a dangerous special drug offender, the court shall sentence the defendant to imprisonment for an appropriate term not to exceed twenty-five years and not disproportionate in severity to the maximum term otherwise authorized by law for such felonious violation. Otherwise it shall sentence the defendant in accordance with the law prescribing penalties for such felonious violation. The court shall place in the record its findings, including an identification of the information relied upon in making such findings, and its reasons for the sentence imposed.

(c) This section shall not prevent the imposition and execution of a sentence of imprisonment for life or for a term exceeding twenty-five years upon any person convicted of an offense so punishable.

(d) Notwithstanding any other provision of this section, the court shall not sentence a dangerous special drug offender to less than any mandatory minimum penalty prescribed by law for such felonious violation. This section shall not be construed as creating any mandatory minimum penalty.

Conditions.

(e) A defendant is a special drug offender for purposes of this section if—

(1) the defendant has previously been convicted in courts of the United States or a State or any political subdivision thereof for two or more offenses involving dealing in controlled substances, committed on occasions different from one another and different from such felonious violation, and punishable in such courts by death or imprisonment in excess of one year, for one or more of such convictions the defendant has been imprisoned prior to the commission of such felonious violation, and less than five years have elapsed between the commission of such felonious violation and either the defendant's release, or parole or otherwise, from imprisonment for one such conviction or his commission of the last such previous offense or another offense involving dealing in controlled substances and punishable by death or imprisonment in excess of one year under applicable laws of the United States or a State or any political subdivision thereof; or

(2) the defendant committed such felonious violation as part of a pattern of dealing in controlled substances which was crimi-

nal under applicable laws of any jurisdiction, which constituted a substantial source of his income, and in which he manifested special skill or expertise; or

(3) such felonious violation was, or the defendant committed such felonious violation in furtherance of, a conspiracy with three or more other persons to engage in a pattern of dealing in controlled substances which was criminal under applicable laws of any jurisdiction, and the defendant did, or agreed that he would, initiate, organize, plan, finance, direct, manage, or supervise all or part of such conspiracy or dealing, or give or receive a bribe or use force in connection with such dealing.

A conviction shown on direct or collateral review or at the hearing to be invalid or for which the defendant has been pardoned on the ground of innocence shall be disregarded for purposes of paragraph (1) of this subsection. In support of findings under paragraph (2) of this subsection, it may be shown that the defendant has had in his own name or under his control income or property not explained as derived from a source other than such dealing. For purposes of paragraph (2) of this subsection, a substantial source of income means a source of income which for any period of one year or more exceeds the minimum wage, determined on the basis of a forty-hour week and fifty-week year, without reference to exceptions, under section 6(a)(1) of the Fair Labor Standards Act of 1938 for an employee engaged in commerce or in the production of goods for commerce, and which for the same period exceeds fifty percent of the defendant's declared adjusted gross income under section 62 of the Internal Revenue Code of 1954. For purposes of paragraph (2) of this subsection, special skill or expertise in such dealing includes unusual knowledge, judgment or ability, including manual dexterity, facilitating the initiation, organizing, planning, financing, direction, management, supervision, execution or concealment of such dealing, the enlistment of accomplices in such dealing, the escape from detection or apprehension for such dealing, or the disposition of the fruits or proceeds of such dealing. For purposes of paragraphs (2) and (3) of this subsection, such dealing forms a pattern if it embraces criminal acts that have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events.

Substantial source of income.

50 Stat. 820.
29 USC 206.

68A Stat. 171
83 Stat. 655.
26 USC 62.

Dealing.

(f) A defendant is dangerous for purposes of this section if a period of confinement longer than that provided for such felonious violation is required for the protection of the public from further criminal conduct by the defendant.

Defendant, dangerous.

(g) The time for taking an appeal from a conviction for which sentence is imposed after proceedings under this section shall be measured from imposition of the original sentence.

Appeal.

(h) With respect to the imposition, correction, or reduction of a sentence after proceedings under this section, a review of the sentence on the record of the sentencing court may be taken by the defendant or the United States to a court of appeals. Any review of the sentence taken by the United States shall be taken at least five days before expiration of the time for taking a review of the sentence or appeal of the conviction by the defendant and shall be diligently prosecuted. The sentencing court may, with or without motion and notice, extend the time for taking a review of the sentence for a period not to exceed thirty days from the expiration of the time otherwise prescribed by law. The court shall not extend the time for taking a review of the sentence by the United States after the time has expired. A court

Sentence, review.

extending the time for taking a review of the sentence by the United States shall extend the time for taking a review of the sentence or appeal of the conviction by the defendant for the same period. The taking of a review of the sentence by the United States shall be deemed the taking of a review of the sentence and an appeal of the conviction by the defendant. Review of the sentence shall include review of whether the procedure employed was lawful, the findings made were clearly erroneous, or the sentencing court's discretion was abused. The court of appeals on review of the sentence may, after considering the record, including the entire presentence report, information submitted during the trial of such felonious violation and the sentencing hearing, and the findings and reasons of the sentencing court, affirm the sentence, impose or direct the imposition of any sentence which the sentencing court could originally have imposed, or remand for further sentencing proceedings and imposition of sentence, except that a sentence may be made more severe only on review of the sentence taken by the United States and after hearing. Failure of the United States to take a review of the imposition of the sentence shall, upon review taken by the United States of the correction or reduction of the sentence, foreclose imposition of a sentence more severe than that previously imposed. Any withdrawal or dismissal of review of the sentence taken by the United States shall foreclose imposition of a sentence more severe than that reviewed but shall not otherwise foreclose the review of the sentence or the appeal of the conviction. The court of appeals shall state in writing the reasons for its disposition of the review of the sentence. Any review of the sentence taken by the United States may be dismissed on a showing of the abuse of the right of the United States to take such review.

INFORMATION FOR SENTENCING

SEC. 410. Except as otherwise provided in this title or section 303(a) of the Public Health Service Act, no limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence under this title or title III.

70 Stat. 929.
42 USC 242a.

Post, p. 1285.

PROCEEDINGS TO ESTABLISH PRIOR CONVICTIONS

SEC. 411. (a)(1) No person who stands convicted of an offense under this part shall be sentenced to increased punishment by reason of one or more prior convictions, unless before trial, or before entry of a plea of guilty, the United States attorney files an information with the court (and serves a copy of such information on the person or counsel for the person) stating in writing the previous convictions to be relied upon. Upon a showing by the United States attorney that facts regarding prior convictions could not with due diligence be obtained prior to trial or before entry of a plea of guilty, the court may postpone the trial or the taking of the plea of guilty for a reasonable period for the purpose of obtaining such facts. Clerical mistakes in the information may be amended at any time prior to the pronouncement of sentence.

Prohibition.

(2) An information may not be filed under this section if the increased punishment which may be imposed is imprisonment for a term in excess of three years unless the person either waived or was afforded prosecution by indictment for the offense for which such increased punishment may be imposed.

Previous conviction, affirmation or denial.

(b) If the United States attorney files an information under this section, the court shall after conviction but before pronouncement of sentence inquire of the person with respect to whom the information was filed whether he affirms or denies that he has been previously convicted as alleged in the information, and shall inform him that any challenge to a prior conviction which is not made before sentence is imposed may not thereafter be raised to attack the sentence.

Denial, written response.

Hearing.

(c)(1) If the person denies any allegation of the information of prior conviction, or claims that any conviction alleged is invalid, he shall file a written response to the information. A copy of the response shall be served upon the United States attorney. The court shall hold a hearing to determine any issues raised by the response which would except the person from increased punishment. The failure of the United States attorney to include in the information the complete criminal record of the person or any facts in addition to the convictions to be relied upon shall not constitute grounds for invalidating the notice given in the information required by subsection (a)(1). The hearing shall be before the court without a jury and either party may introduce evidence. Except as otherwise provided in paragraph (2) of this subsection, the United States attorney shall have the burden of proof beyond a reasonable doubt on any issue of fact. At the request of either party, the court shall enter findings of fact and conclusions of law.

Court without jury.

Evidence, introduction.

Constitution of U.S., violation.

(2) A person claiming that a conviction alleged in the information was obtained in violation of the Constitution of the United States shall set forth his claim, and the factual basis therefor, with particularity in his response to the information. The person shall have the burden of proof by a preponderance of the evidence on any issue of fact raised by the response. Any challenge to a prior conviction, not raised by response to the information before an increased sentence is imposed in reliance thereon, shall be waived unless good cause be shown for failure to make a timely challenge.

Sentence, imposition.

(d)(1) If the person files no response to the information, or if the court determines, after hearing, that the person is subject to increased punishment by reason of prior convictions, the court shall proceed to impose sentence upon him as provided by this part.

(2) If the court determines that the person has not been convicted as alleged in the information, that a conviction alleged in the information is invalid, or that the person is otherwise not subject to an increased sentence as a matter of law, the court shall, at the request of the United States attorney, postpone sentence to allow an appeal from that determination. If no such request is made, the court shall impose sentence as provided by this part. The person may appeal from an order postponing sentence as if sentence had been pronounced and a final judgment of conviction entered.

Statute of limitations.

(e) No person who stands convicted of an offense under this part may challenge the validity of any prior conviction alleged under this section which occurred more than five years before the date of the information alleging such prior conviction.

Part E—Administrative and Enforcement Provisions

Procedures

Attorney General, functions, delegation.

Sec. 501. (a) The Attorney General may delegate any of his functions under this title to any officer or employee of the Department of Justice.

Regulations.

(b) The Attorney General may promulgate and enforce any rules, regulations, and procedures which he may deem necessary and appropriate for the efficient execution of his functions under this title.

Gifts, etc., acceptance.

(c) The Attorney General may accept in the name of the Department of Justice any form of devise, bequest, gift, or donation where the donor intends to donate property for the purpose of preventing or controlling the abuse of controlled substances. He may take all appropriate steps to secure possession of such property and may sell, assign, transfer, or convey any such property other than moneys.

EDUCATION AND RESEARCH PROGRAMS OF THE ATTORNEY GENERAL

SEC. 502. (a) The Attorney General is authorized to carry out educational and research programs directly related to enforcement of the laws under his jurisdiction concerning drugs or other substances which are or may be subject to control under this title. Such programs may include—

(1) educational and training programs on drug abuse and controlled substances law enforcement for local, State, and Federal personnel;

(2) studies or special projects designed to compare the deterrent effects of various enforcement strategies on drug use and abuse;

(3) studies or special projects designed to assess and detect accurately the presence in the human body of drugs or other substances which are or may be subject to control under this title, including the development of rapid field identification methods which would enable agents to detect microquantities of such drugs or other substances;

(4) studies or special projects designed to evaluate the nature and sources of the supply of illegal drugs throughout the country;

(5) studies or special projects to develop more effective methods to prevent diversion of controlled substances into illegal channels; and

(6) studies or special projects to develop information necessary to carry out his functions under section 201 of this title.

Ante, p. 1245.

(b) The Attorney General may enter into contracts for such educational and research activities without performance bonds and without regard to section 3709 of the Revised Statutes (41 U.S.C. 5).

Research populations, identification, prohibition.

(c) The Attorney General may authorize persons engaged in research to withhold the names and other identifying characteristics of persons who are the subjects of such research. Persons who obtain this authorization may not be compelled in any Federal, State, or local civil, criminal, administrative, legislative, or other proceeding to identify the subjects of research for which such authorization was obtained.

Controlled substances, exception.

(d) The Attorney General, on his own motion or at the request of the Secretary, may authorize the possession, distribution, and dispensing of controlled substances by persons engaged in research. Persons who obtain this authorization shall be exempt from State or Federal prosecution for possession, distribution, and dispensing of controlled substances to the extent authorized by the Attorney General.

COOPERATIVE ARRANGEMENTS

SEC. 503. (a) The Attorney General shall cooperate with local, State, and Federal agencies concerning traffic in controlled substances and in suppressing the abuse of controlled substances. To this end, he is authorized to—

(1) arrange for the exchange of information between governmental officials concerning the use and abuse of controlled substances;

(2) cooperate in the institution and prosecution of cases in the courts of the United States and before the licensing boards and courts of the several States;

(3) conduct training programs on controlled substance law enforcement for local, State, and Federal personnel;

(4) maintain in the Department of Justice a unit which will accept, catalog, file, and otherwise utilize all information and statistics, including records of controlled substance abusers and other controlled substance law offenders, which may be received from Federal, State, and local agencies, and make such information available for Federal, State, and local law enforcement purposes; and

(5) conduct programs of eradication aimed at destroying wild or illicit growth of plant species from which controlled substances may be extracted.

Assistance.

(b) When requested by the Attorney General, it shall be the duty of any agency or instrumentality of the Federal Government to furnish assistance, including technical advice, to him for carrying out his functions under this title; except that no such agency or instrumentality shall be required to furnish the name of, or other identifying information about, a patient or research subject whose identity it has undertaken to keep confidential.

Prohibition.

ADVISORY COMMITTEES

Appointment.

SEC. 504. The Attorney General may from time to time appoint committees to advise him with respect to preventing and controlling the abuse of controlled substances. Members of the committees may be entitled to receive compensation at the rate of $100 for each day (including traveltime) during which they are engaged in the actual performance of duties. While traveling on official business in the performance of duties for the committees, members of the committees shall be allowed expenses of travel, including per diem instead of subsistence, in accordance with subchapter I of chapter 57 of title 5, United States Code.

Compensation.

Travel expenses, etc.

80 Stat. 498; 83 Stat. 190. 5 USC 5701.

ADMINISTRATIVE HEARINGS

SEC. 505. (a) In carrying out his functions under this title, the Attorney General may hold hearings, sign and issue subpenas, administer oaths, examine witnesses, and receive evidence at any place in the United States.

(b) Except as otherwise provided in this title, notice shall be given and hearings shall be conducted under appropriate procedures of subchapter II of chapter 5, title 5, United States Code.

80 Stat. 381. 5 USC 551.

SUBPENAS

SEC. 506. (a) In any investigation relating to his functions under this title with respect to controlled substances, the Attorney General may subpena witnesses, compel the attendance and testimony of witnesses, and require the production of any records (including books, papers, documents, and other tangible things which constitute or contain evidence) which the Attorney General finds relevant or material to the investigation. The attendance of witnesses and the production of records may be required from any place in any State or in any territory

Exception.

Fees.

or other place subject to the jurisdiction of the United States at any designated place of hearing; except that a witness shall not be required to appear at any hearing more than 500 miles distant from the place where he was served with a subpena. Witnesses summoned under this section shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

Service.

(b) A subpena issued under this section may be served by any person designated in the subpena to serve it. Service upon a natural person may be made by personal delivery of the subpena to him. Service may be made upon a domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering the subpena to an officer, to a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process. The affidavit of the person serving the subpena entered on a true copy thereof by the person serving it shall be proof of service.

Refusal to obey subpena.

Order.

Failure to obey order, penalty. Jurisdiction.

(c) In the case of contumacy by or refusal to obey a subpena issued to any person, the Attorney General may invoke the aid of any court of the United States within the jurisdiction of which the investigation is carried on or of which the subpenaed person is an inhabitant, or in which he carries on business or may be found, to compel compliance with the subpena. The court may issue an order requiring the subpenaed person to appear before the Attorney General to produce records, if so ordered, or to give testimony touching the matter under investigation. Any failure to obey the order of the court may be punished by the court as a contempt thereof. All process in any such case may be served in any judicial district in which such person may be found.

JUDICIAL REVIEW

SEC. 507. All final determinations, findings, and conclusions of the Attorney General under this title shall be final and conclusive decisions of the matters involved, except that any person aggrieved by a final decision of the Attorney General may obtain review of the decision in the United States Court of Appeals for the District of Columbia or for the circuit in which his principal place of business is located upon petition filed with the court and delivered to the Attorney General within thirty days after notice of the decision. Findings of fact by the Attorney General, if supported by substantial evidence, shall be conclusive.

POWERS OF ENFORCEMENT PERSONNEL

SEC. 508. Any officer or employee of the Bureau of Narcotics and Dangerous Drug designated by the Attorney General may—

(1) carry firearms;

(2) execute and serve search warrants, arrest warrants, administrative inspection warrants, subpenas, and summonses issued under the authority of the United States;

(3) make arrests without warrant (A) for any offense against the United States committed in his presence, or (B) for any felony, cognizable under the laws of the United States, if he has probable cause to believe that the person to be arrested has committed or is committing a felony;

(4) make seizures of property pursuant to the provisions of this title; and

(5) perform such other law enforcement duties as the Attorney General may designate.

SEARCH WARRANTS

SEC. 509. (a) A search warrant relating to offenses involving controlled substances may be served at any time of the day or night if the judge or United States magistrate issuing the warrant is satisfied that there is probable cause to believe that grounds exist for the warrant and for its service at such time.

Authority to break and enter under certain conditions.

(b) Any officer authorized to execute a search warrant relating to offenses involving controlled substances the penalty for which is imprisonment for more than one year may, without notice of his authority and purpose, break open an outer or inner door or window of a building, or any part of the building, or anything therein, if the judge or United States magistrate issuing the warrant (1) is satisfied that there is probable cause to believe that (A) the property sought may and, if such notice is given, will be easily and quickly destroyed or disposed of, or (B) the giving of such notice will immediately endanger the life or safety of the executing officer or another person, and (2) has included in the warrant a direction that the officer executing it shall not be required to give such notice. Any officer acting under such warrant, shall, as soon as practicable after entering the premises, identify himself and give the reasons and authority for his entrance upon the premises.

ADMINISTRATIVE INSPECTIONS AND WARRANTS

"Controlled premises."

SEC. 510. (a) As used in this section, the term "controlled premises" means—

(1) places where original or other records or documents required under this title are kept or required to be kept, and

(2) places, including factories, warehouses, or other establishments, and conveyances, where persons registered under section 303 (or exempted from registration under section 302(d)) may lawfully hold, manufacture, or distribute, dispense, administer, or otherwise dispose of controlled substances.

(b)(1) For the purpose of inspecting, copying, and verifying the correctness of records, reports, or other documents required to be kept or made under this title and otherwise facilitating the carrying out of his functions under this title, the Attorney General is authorized, in accordance with this section, to enter controlled premises and to conduct administrative inspections thereof, and of the things specified in this section, relevant to those functions.

(2) Such entries and inspections shall be carried out through officers or employees (hereinafter referred to as "inspectors") designated by the Attorney General. Any such inspector, upon stating his purpose and presenting to the owner, operator, or agent in charge of such premises (A) appropriate credentials and (B) a written notice of his inspection authority (which notice in the case of an inspection requiring, or in fact supported by, an administrative inspection warrant shall consist of such warrant), shall have the right to enter such premises and conduct such inspection at reasonable times.

(3) Except as may otherwise be indicated in an applicable inspection warrant, the inspector shall have the right—

(A) to inspect and copy records, reports, and other documents required to be kept or made under this title;

(B) to inspect, within reasonable limits and in a reasonable manner, controlled premises and all pertinent equipment, finished and unfinished drugs and other substances or materials, containers, and labeling found therein, and, except as provided in para-

graph (5) of this subsection, all other things therein (including records, files, papers, processes, controls, and facilities) appropriate for verification of the records, reports, and documents referred to in clause (A) or otherwise bearing on the provisions of this title; and

(C) to inventory any stock of any controlled substance therein and obtain samples of any such substance.

(4) Except when the owner, operator, or agent in charge of the controlled premises so consents in writing, no inspection authorized by this section shall extend to—

(A) financial data;

(B) sales data other than shipment data; or

(C) pricing data.

(c) A warrant under this section shall not be required for the inspection of books and records pursuant to an administrative subpena issued in accordance with section 506, nor for entries and administrative inspections (including seizures of property)—

(1) with the consent of the owner, operator, or agent in charge of the controlled premises;

(2) in situations presenting imminent danger to health or safety;

(3) in situations involving inspection of conveyances where there is reasonable cause to believe that the mobility of the conveyance makes it impracticable to obtain a warrant;

(4) in any other exceptional or emergency circumstance where time or opportunity to apply for a warrant is lacking; or

(5) in any other situations where a warrant is not constitutionally required.

Administrative inspection warrants, issuance and execution.

(d) Issuance and execution of administrative inspection warrants shall be as follows:

"Probable cause."

(1) Any judge of the United States or of a State court of record, or any United States magistrate, may, within his territorial jurisdiction, and upon proper oath or affirmation showing probable cause, issue warrants for the purpose of conducting administrative inspections authorized by this title or regulations thereunder, and seizures of property appropriate to such inspections. For the purposes of this section, the term "probable cause" means a valid public interest in the effective enforcement of this title or regulations thereunder sufficient to justify administrative inspections of the area, premises, building, or conveyance, or contents thereof, in the circumstances specified in the application for the warrant.

(2) A warrant shall issue only upon an affidavit of an officer or employee having knowledge of the facts alleged, sworn to before the judge or magistrate and establishing the grounds for issuing the warrant. If the judge or magistrate is satisfied that grounds for the application exist or that there is probable cause to believe they exist, he shall issue a warrant identifying the area, premises, building, or conveyance to be inspected, the purpose of such inspection, and, where appropriate, the type of property to be inspected, if any. The warrant shall identify the items or types of property to be seized, if any. The warrant shall be directed to a person authorized under subsection (b)(2) to execute it. The warrant shall state the grounds for its issuance and the name of the person or persons whose affidavit has been taken in support thereof. It shall command the person to whom it is directed to inspect the area, premises, building, or conveyance identified for the purpose specified, and, where appropriate, shall direct the seizure of the property specified. The warrant shall direct that it be served during normal business hours. It shall designate the judge or magistrate to whom it shall be returned.

(3) A warrant issued pursuant to this section must be executed and returned within ten days of its date unless, upon a showing by the United States of a need therefor, the judge or magistrate allows additional time in the warrant. If property is seized pursuant to a warrant, the person executing the warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken or shall leave the copy and receipt at the place from which the property was taken. The return of the warrant shall be made promptly and shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the person executing the warrant and of the person from whose possession or premises the property was taken, if they are present, or in the presence of at least one credible person other than the person making such inventory, and shall be verified by the person executing the warrant. The judge or magistrate, upon request, shall deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

(4) The judge or magistrate who has issued a warrant under this section shall attach to the warrant a copy of the return and all papers filed in connection therewith and shall file them with the clerk of the district court of the United States for the judicial district in which the inspection was made. Warrants, filing.

FORFEITURES

SEC. 511. (a) The following shall be subject to forfeiture to the United States and no property right shall exist in them:

(1) All controlled substances which have been manufactured, distributed, dispensed, or acquired in violation of this title.

(2) All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this title.

(3) All property which is used, or intended for use, as a container for property described in paragraph (1) or (2).

(4) All conveyances, including aircraft, vehicles, or vessels, which are used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of property described in paragraph (1) or (2), except that—

(A) no conveyance used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited under the provisions of this section unless it shall appear that the owner or other person in charge of such conveyance was a consenting party or privy to a violation of this title or title III; and

(B) no conveyance shall be forfeited under the provisions of this section by reason of any act or omission established by the owner thereof to have been committed or omitted by any person other than such owner while such conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States, or of any State. Post, p. 1285.

(5) All books, records, and research, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this title.

(b) Any property subject to forfeiture to the United States under this title may be seized by the Attorney General upon process issued pursuant to the Supplemental Rules for Certain Admiralty and Maritime Claims by any district court of the United States having jurisdiction over the property, except that seizure without such process may be made when—

(1) the seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(2) the property subject to seizure has been the subject of a prior judgment in favor of the United States in a criminal injunction or forfeiture proceeding under this title;

(3) the Attorney General has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(4) the Attorney General has probable cause to believe that the property has been used or is intended to be used in violation of this title.

In the event of seizure pursuant to paragraph (3) or (4) of this subsection, proceedings under subsection (d) of this section shall be instituted promptly.

Property, custody of Attorney General.

(c) Property taken or detained under this section shall not be repleviable, but shall be deemed to be in the custody of the Attorney General, subject only to the orders and decrees of the court or the official having jurisdiction thereof. Whenever property is seized under the provisions of this title, the Attorney General may—

(1) place the property under seal;

(2) remove the property to a place designated by him; or

(3) require that the General Services Administration take custody of the property and remove it to an appropriate location for disposition in accordance with law.

(d) All provisions of law relating to the seizure, summary and judicial forfeiture, and condemnation of property for violation of the customs laws; the disposition of such property or the proceeds from the sale thereof; the remission or mitigation of such forfeitures; and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this title, insofar as applicable and not inconsistent with the provisions hereof; except that such duties as are imposed upon the customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws shall be performed with respect to seizures and forfeitures of property under this title by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General, except to the extent that such duties arise from seizures and forfeitures effected by any customs officer.

(e) Whenever property is forfeited under this title the Attorney General may—

(1) retain the property for official use;

(2) sell any forfeited property which is not required to be destroyed by law and which is not harmful to the public, but the proceeds from any such sale shall be used to pay all proper expenses of the proceedings for forfeiture and sale including expenses of seizure, maintenance of custody, advertising and court costs;

(3) require that the General Services Administration take custody of the property and remove it for disposition in accordance with law; or

(4) forward it to the Bureau of Narcotics and Dangerous Drugs for disposition (including delivery for medical or scientific use to any Federal or State agency under regulations of the Attorney General).

Controlled substances, forfeiture.

(f) All controlled substances in schedule I that are possessed, transferred, sold, or offered for sale in violation of the provisions of this title shall be deemed contraband and seized and summarily forfeited to the United States. Similarly, all substances in schedule I, which are seized or come into the possession of the United States, the owners of which are unknown, shall be deemed contraband and summarily forfeited to the United States.

(g) (1) All species of plants from which controlled substances in schedules I and II may be derived which have been planted or cultivated in violation of this title, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the United States.

(2) The failure, upon demand by the Attorney General or his duly authorized agent, of the person in occupancy or in control of land or premises upon which such species of plants are growing or being stored, to produce an appropriate registration, or proof that he is the holder thereof, shall constitute authority for the seizure and forfeiture.

(3) The Attorney General, or his duly authorized agent, shall have authority to enter upon any lands, or into any dwelling pursuant to a search warrant, to cut, harvest, carry off, or destroy such plants.

INJUNCTIONS

Jurisdiction of courts.

SEC. 512. (a) The district courts of the United States and all courts exercising general jurisdiction in the territories and possessions of the United States shall have jurisdiction in proceedings in accordance with the Federal Rules of Civil Procedure to enjoin violations of this title.

(b) In case of an alleged violation of an injunction or restraining order issued under this section, trial shall, upon demand of the accused, be by a jury in accordance with the Federal Rules of Civil Procedure.

28 USC app.

ENFORCEMENT PROCEEDINGS

Notice.

SEC. 513. Before any violation of this title is reported by the Director of the Bureau of Narcotics and Dangerous Drugs to any United States attorney for institution of a criminal proceeding, the Director may require that the person against whom such proceeding is contemplated be given appropriate notice and an opportunity to present his views, either orally or in writing, with regard to such contemplated proceeding.

IMMUNITY AND PRIVILEGE

Refusal to testify, prohibition.

SEC. 514. (a) Whenever a witness refuses, on the basis of his privilege against self-incrimination, to testify or provide other information in a proceeding before a court or grand jury of the United States, involving a violation of this title, and the person presiding over the proceeding communicates to the witness an order issued under this section, the witness may not refuse to comply with the order on the basis of his privilege against self-incrimination. But no testimony or other information compelled under the order issued under subsection (b) of this section or any information obtained by the exploitation of such testimony or other information, may be used against the witness in any criminal case, including any criminal case brought in a court of a State, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order.

84 STAT. 1279

Order.

(b) In the case of any individual who has been or may be called to testify or provide other information at any proceeding before a court or grand jury of the United States, the United States district court for the judicial district in which the proceeding is or may be held shall issue, upon the request of the United States attorney for such district, an order requiring such individual to give any testimony or provide any other information which he refuses to give or provide on the basis of his privilege against self-incrimination.

(c) A United States attorney may, with the approval of the Attorney General or the Deputy Attorney General, or any Assistant Attorney General designated by the Attorney General, request an order under subsection (b) when in his judgment—

(1) the testimony or other information from such individual may be necessary to the public interest; and

(2) such individual has refused or is likely to refuse to testify or provide other information on the basis of his privilege against self-incrimination.

BURDEN OF PROOF; LIABILITIES

SEC. 515. (a)(1) It shall not be necessary for the United States to negative any exemption or exception set forth in this title in any complaint, information, indictment, or other pleading or in any trial, hearing, or other proceeding under this title, and the burden of going forward with the evidence with respect to any such exemption or exception shall be upon the person claiming its benefit.

Ante, p. 1264.

(2) In the case of a person charged under section 404(a) with the possession of a controlled substance, any label identifying such substance for purposes of section 503(b)(2) of the Federal Food, Drug, and Cosmetic Act shall be admissible in evidence and shall be prima facie evidence that such substance was obtained pursuant to a valid prescription from a practitioner while acting in the course of his professional practice.

65 Stat. 648.
21 USC 353.

(b) In the absence of proof that a person is the duly authorized holder of an appropriate registration or order form issued under this title, he shall be presumed not to be the holder of such registration or form, and the burden of going forward with the evidence with respect to such registration or form shall be upon him.

(c) The burden of going forward with the evidence to establish that a vehicle, vessel, or aircraft used in connection with controlled substances in schedule I was used in accordance with the provisions of this title shall be on the persons engaged in such use.

Criminal liability, prohibition, exception.
62 Stat. 803.

(d) Except as provided in sections 2234 and 2235 of title 18, United States Code, no civil or criminal liability shall be imposed by virtue of this title upon any duly authorized Federal officer lawfully engaged in the enforcement of this title, or upon any duly authorized officer of any State, territory, political subdivision thereof, the District of Columbia, or any possession of the United States, who shall be lawfully engaged in the enforcement of any law or municipal ordinance relating to controlled substances.

PAYMENTS AND ADVANCES

Informers, payment.

SEC. 516. (a) The Attorney General is authorized to pay any person, from funds appropriated for the Bureau of Narcotics and Dangerous Drugs, for information concerning a violation of this title, such sum or sums of money as he may deem appropriate, without reference to any moieties or rewards to which such person may otherwise be entitled by law.

(b) Moneys expended from appropriations of the Bureau of Narcotics and Dangerous Drugs for purchase of controlled substances and subsequently recovered shall be reimbursed to the current appropriation for the Bureau.

(c) The Attorney General is authorized to direct the advance of funds by the Treasury Department in connection with the enforcement of this title. Funds, advancement, authority of Attorney General.

PART F—ADVISORY COMMISSION

ESTABLISHMENT OF COMMISSION ON MARIHUANA AND DRUG ABUSE

SEC. 601. (a) There is established a commission to be known as the Commission on Marihuana and Drug Abuse (hereafter in this section referred to as the "Commission"). The Commission shall be composed of— Membership.

(1) two Members of the Senate appointed by the President of the Senate;

(2) two Members of the House of Representatives appointed by the Speaker of the House of Representatives; and

(3) nine members appointed by the President of the United States.

At no time shall more than one of the members appointed under paragraph (1), or more than one of the members appointed under paragraph (2), or more than five of the members appointed under paragraph (3) be members of the same political party.

(b)(1) The President shall designate one of the members of the Commission as Chairman, and one as Vice Chairman. Seven members of the Commission shall constitute a quorum, but a lesser number may conduct hearings. Quorum.

(2) Members of the Commission who are Members of Congress or full-time officers or employees of the United States shall serve without additional compensation but shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of the duties vested in the Commission. Members of the Commission from private life shall receive $100 per diem while engaged in the actual performance of the duties vested in the Commission, plus reimbursement for travel, subsistence, and other necessary expenses incurred in the performance of such duties. Travel expenses, etc. Compensation.

(3) The Commission shall meet at the call of the Chairman or at the call of a majority of the members thereof. Meetings.

(c)(1) The Commission shall have the power to appoint and fix the compensation of such personnel as it deems advisable, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates. Personnel. 80 Stat. 443, 467. 5 USC 5101, 5331.

(2) The Commission may procure, in accordance with the provisions of section 3109 of title 5, United States Code, the temporary or intermittent services of experts or consultants. Persons so employed shall receive compensation at a rate to be fixed by the Commission, but not in excess of $75 per diem, including traveltime. While away from his home or regular place of business in the performance of services for the Commission, any such person may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703(b) of title 5, United States Code, for persons in the Government service employed intermittently. 35 F. R. 6247. Experts and consultants. 80 Stat. 416. Travel expenses, etc. 80 Stat. 499; 83 Stat. 190.

(3) The Commission may secure directly from any department or agency of the United States information necessary to enable it to Information, availability.

carry out its duties under this section. Upon request of the Chairman of the Commission, such department or agency shall furnish such information to the Commission.

Marihuana, study.

(d)(1) The Commission shall conduct a study of marihuana including, but not limited to, the following areas:

(A) the extent of use of marihuana in the United States to include its various sources, the number of users, number of arrests, number of convictions, amount of marihuana seized, type of user, nature of use;

(B) an evaluation of the efficacy of existing marihuana laws;

(C) a study of the pharmacology of marihuana and its immediate and long-term effects, both physiological and psychological;

(D) the relationship of marihuana use to aggressive behavior and crime;

(E) the relationship between marihuana and the use of other drugs; and

(F) the international control of marihuana.

Report to President and Congress.

(2) Within one year after the date on which funds first become available to carry out this section, the Commission shall submit to the President and the Congress a comprehensive report on its study and investigation under this subsection which shall include its recommendations and such proposals for legislation and administrative action as may be necessary to carry out its recommendations.

Drug abuse, study and investigation. Interim reports. Final report to President and Congress. Termination. Expenditures, limitation.

(e) The Commission shall conduct a comprehensive study and investigation of the causes of drug abuse and their relative significance. The Commission shall submit to the President and the Congress such interim reports as it deems advisable and shall within two years after the date on which funds first become available to carry out this section submit to the President and the Congress a final report which shall contain a detailed statement of its findings and conclusions and also such recommendations for legislation and administrative actions as it deems appropriate. The Commission shall cease to exist sixty days after the final report is submitted under this subsection.

(f) Total expenditures of the Commission shall not exceed $1,000,000.

Part G—Conforming, Transitional and Effective Date, and General Provisions

Repeals and conforming amendments

Repeals. 79 Stat. 227, 232, 228; 82 Stat. 1361.

Sec. 701. (a) Sections 201(v), 301(q), and 511 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(v), 331(q), 360(a) are repealed.

Penalties. 82 Stat. 1361.

(b) Subsections (a) and (b) of section 303 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 333) are amended to read as follows:

"Sec. 303. (a) Any person who violates a provision of section 301 shall be imprisoned for not more than one year or fined not more than $1,000, or both.

"(b) Notwithstanding the provisions of subsection (a) of this section, if any person commits such a violation after a conviction of him under this section has become final, or commits such a violation with the intent to defraud or mislead, such person shall be imprisoned for not more than three years or fined not more than $10,000 or both."

79 Stat. 233.

(c) Section 304(a)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 334(a)(2)) is amended (1) by striking out clauses (A) and (D), (2) by striking out "of such depressant or stimulant

drug or" in clause (C), (3) by adding "and" after the comma at the end of clause (C), and (4) by redesignating clauses (B), (C), and (E) as clauses (A), (B), and (C), respectively.

(d) Section 304(d)(3)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 334(d)(3)(iii)) is amended by striking out "depressant or stimulant drugs or". 79 Stat. 233.

(e) Section 510 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360) is amended (1) in subsection (a) by striking out paragraph (2), by inserting "and" at the end of paragraph (1), and by redesignating paragraph (3) as paragraph (2); (2) by striking out "or in the wholesaling, jobbing, or distributing of any depressant or stimulant drug" in the first sentence of subsection (b); (3) by striking out the last sentence of subsection (b); (4) by striking out "or in the wholesaling, jobbing, or distributing of any depressant or stimulant drug" in the first sentence of subsection (c); (5) by striking out the last sentence of subsection (c); (6) by striking out "(1)" in subsection (d) and by inserting a period after "drug or drugs" in that subsection and deleting the remainder of that subsection; and (7) by striking out "AND CERTAIN WHOLESALERS" in the section heading. 76 Stat. 794; 79 Stat. 231.

(f) Section 702 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 372) is amended by striking out "to depressant or stimulant drugs or" in subsection (e). 79 Stat. 234.

(g) Section 201(a)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(a)(2)) is amended by inserting a period after "Canal Zone" the first time these words appear and deleting all thereafter in such section 201(a)(2). 76 Stat. 796; 82 Stat. 1362.

(h) The last sentence of section 801(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381(a)) is amended (1) by striking out "This paragraph" and inserting in lieu thereof "Clause (2) of the third sentence of this paragraph,", and (2) by striking out "section 2 of the Act of May 26, 1922, as amended (U.S.C. 1934, edition, title 21, sec. 173)" and inserting in lieu thereof "the Controlled Substances Import and Export Act". 52 Stat. 1058.

(i)(1) Section 1114 of title 18, United States Code, is amended by striking out "the Bureau of Narcotics" and inserting in lieu thereof "the Bureau of Narcotics and Dangerous Drugs". 65 Stat. 721.

(2) Section 1952 of such title is amended— 75 Stat. 498.

(A) by inserting in subsection (b)(1) "or controlled substances (as defined in section 102(6) of the Controlled Substances Act)" immediately following "narcotics"; and 18 USC 1952.

(B) by striking out "or narcotics" in subsection (c).

(j) Subsection (a) of section 302 of the Public Health Service Act (42 U.S.C. 242(a)) is amended to read as follows: Drugs, study. 58 Stat. 692.

"SEC. 302. (a) In carrying out the purposes of section 301 with respect to drugs the use or misuse of which might result in drug abuse or dependency, the studies and investigations authorized therein shall include the use and misuse of narcotic drugs and other drugs. Such studies and investigations shall further include the quantities of crude opium, coca leaves, and their salts, derivatives, and preparations, and other drugs subject to control under the Controlled Substances Act and Controlled Substances Import and Export Act, together with reserves thereof, necessary to supply the normal and emergency medicinal and scientific requirements of the United States. The results of studies and investigations of the quantities of narcotic drugs or other drugs subject to control under such Acts, together with reserves of such drugs, that are necessary to supply the normal and emergency medicinal and scientific requirements of the United States, shall be Ante, p. 1242. Post, p. 1285. Report to Attorney General.

reported not later than the first day of April of each year to the Attorney General, to be used at his discretion in determining manufacturing quotas or importation requirements under such Acts."

PENDING PROCEEDINGS

SEC. 702. (a) Prosecutions for any violation of law occurring prior to the effective date of section 701 shall not be affected by the repeals or amendments made by such section, or abated by reason thereof.

(b) Civil seizures or forfeitures and injunctive proceedings commenced prior to the effective date of section 701 shall not be affected by the repeals or amendments made by such section, or abated by reason thereof.

(c) All administrative proceedings pending before the Bureau of Narcotics and Dangerous Drugs on the date of enactment of this Act shall be continued and brought to final determination in accord with laws and regulations in effect prior to such date of enactment. Where a drug is finally determined under such proceedings to be a depressant or stimulant drug, as defined in section 201(v) of the Federal Food, Drug, and Cosmetic Act, such drug shall automatically be controlled under this title by the Attorney General without further proceedings and listed in the appropriate schedule after he has obtained the recommendation of the Secretary. Any drug with respect to which such a final determination has been made prior to the date of enactment of this Act which is not listed in section 202 within schedules I through V shall automatically be controlled under this title by the Attorney General without further proceedings, and be listed in the appropriate schedule, after he has obtained the recommendations of the Secretary.

Ante, p. 1281.

Ante, p. 1247.

PROVISIONAL REGISTRATION

SEC. 703. (a) (1) Any person who—

(A) is engaged in manufacturing, distributing, or dispensing any controlled substance on the day before the effective date of section 302, and

(B) is registered on such day under section 510 of the Federal Food, Drug, and Cosmetic Act or under section 4722 of the Internal Revenue Code of 1954,

Ante, p. 1282.

68A Stat. 555.

shall, with respect to each establishment for which such registration is in effect under any such section, be deemed to have a provisional registration under section 303 for the manufacture, distribution, or dispensing (as the case may be) of controlled substances.

(2) During the period his provisional registration is in effect under this section, the registration number assigned such person under such section 510 or under such section 4722 (as the case may be) shall be his registration number for purposes of section 303 of this title.

(b) The provisions of section 304, relating to suspension and revocation of registration, shall apply to a provisional registration under this section.

(c) Unless sooner suspended or revoked under subsection (b), a provisional registration of a person under subsection (a)(1) of this section shall be in effect until—

(1) the date on which such person has registered with the Attorney General under section 303 or has had his registration denied under such section, or

(2) such date as may be prescribed by the Attorney General for registration of manufacturers, distributors, or dispensers, as the case may be,

whichever occurs first.

EFFECTIVE DATES AND OTHER TRANSITIONAL PROVISIONS

SEC. 704. (a) Except as otherwise provided in this section, this title shall become effective on the first day of the seventh calendar month that begins after the day immediately preceding the date of enactment.

(b) Parts A, B, E, and F of this title, section 702, this section, and sections 705 through 709, shall become effective upon enactment.

(c) Sections 305 (relating to labels and labeling), and 306 (relating to manufacturing quotas) shall become effective on the date specified in subsection (a) of this section, except that the Attorney General may by order published in the Federal Register postpone the effective date of either or both of these sections for such period as he may determine to be necessary for the efficient administration of this title.

Ante, p. 1256.

Publication in Federal Register.

CONTINUATION OF REGULATIONS

SEC. 705. Any orders, rules, and regulations which have been promulgated under any law affected by this title and which are in effect on the day preceding enactment of this title shall continue in effect until modified, superseded, or repealed.

SEVERABILITY

SEC. 706. If a provision of this Act is held invalid, all valid provisions that are severable shall remain in effect. If a provision of this Act is held invalid in one or more of its applications, the provision shall remain in effect in all its valid applications that are severable.

SAVING PROVISION

SEC. 707. Nothing in this Act, except this part and, to the extent of any inconsistency, sections 307(e) and 309 of this title, shall be construed as in any way affecting, modifying, repealing, or superseding the provisions of the Federal Food, Drug, and Cosmetic Act.

52 Stat. 1040.
21 USC 301.

APPLICATION OF STATE LAW

SEC. 708. No provision of this title shall be construed as indicating an intent on the part of the Congress to occupy the field in which that provision operates, including criminal penalties, to the exclusion of any State law on the same subject matter which would otherwise be within the authority of the State, unless there is a positive conflict between that provision of this title and that State law so that the two cannot consistently stand together.

APPROPRIATIONS AUTHORIZATIONS

SEC. 709. There are authorized to be appropriated for expenses of the Department of Justice in carrying out its functions under this title (except section 103) not to exceed $60,000,000 for the fiscal year ending June 30, 1972, $70,000,000 for the fiscal year ending June 30, 1973, and $90,000,000 for the fiscal year ending June 30, 1974.

Ante, p. 1245.

TITLE III—IMPORTATION AND EXPORTATION; AMENDMENTS AND REPEALS OF REVENUE LAWS

SHORT TITLE

Citation of title.

SEC. 1000. This title may be cited as the "Controlled Substances Import and Export Act".

PART A—IMPORTATION AND EXPORTATION

DEFINITIONS

SEC. 1001. (a) For purposes of this part—

(1) The term "import" means, with respect to any article, any bringing in or introduction of such article into any area (whether or not such bringing in or introduction constitutes an importation within the meaning of the tariff laws of the United States).

(2) The term "customs territory of the United States" has the meaning assigned to such term by general headnote 2 to the Tariff Schedules of the United States (19 U.S.C. 1202).

77A Stat. 11.

(b) Each term defined in section 102 of title II shall have the same meaning for purposes of this title as such term has for purposes of title II.

Ante, p. 1242.

IMPORTATION OF CONTROLLED SUBSTANCES

Unlawful acts.

SEC. 1002. (a) It shall be unlawful to import into the customs territory of the United States from any place outside thereof (but within the United States), or to import into the United States from any place outside thereof, any controlled substance in schedule I or II of title II, or any narcotic drug in schedule III, IV, or V of title II, except that—

Exceptions.

(1) such amounts of crude opium and coca leaves as the Attorney General finds to be necessary to provide for medical, scientific, or other legitimate purposes, and

(2) such amounts of any controlled substance in schedule I or II or any narcotic drug in schedule III, IV, or V that the Attorney General finds to be necessary to provide for the medical, scientific, or other legitimate needs of the United States—

(A) during an emergency in which domestic supplies of such substance or drug are found by the Attorney General to be inadequate, or

(B) in any case in which the Attorney General finds that competition among domestic manufacturers of the controlled substance is inadequate and will not be rendered adequate by the registration of additional manufacturers under section 303,

Ante, p. 1253.

may be so imported under such regulations as the Attorney General shall prescribe. No crude opium may be so imported for the purpose of manufacturing heroin or smoking opium.

(b) It shall be unlawful to import into the customs territory of the United States from any place outside thereof (but within the United States), or to import into the United States from any place outside thereof, any nonnarcotic controlled substance in schedule III, IV, or V, unless such nonnarcotic controlled substance—

(1) is imported for medical, scientific, or other legitimate uses, and

(2) is imported pursuant to such notification or declaration requirements as the Attorney General may by regulation prescribe.

(c) In addition to the amount of coca leaves authorized to be imported into the United States under subsection (a), the Attorney General may permit the importation of additional amounts of coca leaves. All cocaine and ecgonine (and all salts, derivatives, and preparations from which cocaine or ecgonine may be synthesized or made) contained in such additional amounts of coca leaves imported under this subsection shall be destroyed under the supervision of an authorized representative of the Attorney General.

EXPORTATION OF CONTROLLED SUBSTANCES

SEC. 1003. (a) It shall be unlawful to export from the United States any narcotic drug in schedule I, II, III, or IV unless— Unlawful acts.

(1) it is exported to a country which is a party to—

(A) the International Opium Convention of 1912 for the Suppression of the Abuses of Opium, Morphine, Cocaine, and Derivative Drugs, or to the International Opium Convention signed at Geneva on February 19, 1925; or 38 Stat. 1912. 61 Stat. 2230.

(B) the Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs concluded at Geneva, July 13, 1931, as amended by the protocol signed at Lake Success on December 11, 1946, and the protocol bringing under international control drugs outside the scope of the convention of July 13, 1931, for limiting the manufacture and regulating the distribution of narcotic drugs (as amended by the protocol signed at Lake Success on December 11, 1946), signed at Paris, November 19, 1948; or 48 Stat. 1543. 62 Stat. 1796. 2 UST 1629.

(C) the Single Convention on Narcotic Drugs, 1961, signed at New York, March 30, 1961; 18 UST 1407.

(2) such country has instituted and maintains, in conformity with the conventions to which it is a party, a system for the control of imports of narcotic drugs which the Attorney General deems adequate;

(3) the narcotic drug is consigned to a holder of such permits or licenses as may be required under the laws of the country of import, and a permit or license to import such drug has been issued by the country of import;

(4) substantial evidence is furnished to the Attorney General by the exporter that (A) the narcotic drug is to be applied exclusively to medical or scientific uses within the country of import, and (B) there is an actual need for the narcotic drug for medical or scientific uses within such country; and

(5) a permit to export the narcotic drug in each instance has been issued by the Attorney General.

(b) Notwithstanding subsection (a), the Attorney General may authorize any narcotic drug (including crude opium and coca leaves) in schedule I, II, III, or IV to be exported from the United States to a country which is a party to any of the international instruments mentioned in subsection (a) if the particular drug is to be applied to a special scientific purpose in the country of destination and the authorities of such country will permit the importation of the particular drug for such purpose. Ante, p. 1248.

(c) It shall be unlawful to export from the United States any non-narcotic controlled substance in schedule I or II unless—

(1) it is exported to a country which has instituted and maintains a system which the Attorney General deems adequate for the control of imports of such substances;

(2) the controlled substance is consigned to a holder of such permits or licenses as may be required under the laws of the country of import;

(3) substantial evidence is furnished to the Attorney General that (A) the controlled substance is to be applied exclusively to medical, scientific, or other legitimate uses within the country to which exported, (B) it will not be exported from such country, and (C) there is an actual need for the controlled substance for medical, scientific, or other legitimate uses within the country; and

(4) a permit to export the controlled substance in each instance has been issued by the Attorney General.

(d) Notwithstanding subsection (c), the Attorney General may authorize any nonnarcotic controlled substance in schedule I or II to be exported from the United States if the particular substance is to be applied to a special scientific purpose in the country of destination and the authorities of such country will permit the importation of the particular drug for such purpose.

Ante, p. 1248.

(e) It shall be unlawful to export from the United States to any other country any nonnarcotic controlled substance in schedule III or IV or any controlled substance in schedule V unless—

(1) there is furnished (before export) to the Attorney General documentary proof that importation is not contrary to the laws or regulations of the country of destination;

(2) a special controlled substance invoice, in triplicate, accompanies the shipment setting forth such information as the Attorney General may prescribe to identify the parties to the shipment and the means of shipping, and

(3) two additional copies of the invoice are forwarded to the Attorney General before the controlled substance is exported from the United States.

TRANSSHIPMENT AND IN-TRANSIT SHIPMENT OF CONTROLLED SUBSTANCES

SEC. 1004. Notwithstanding sections 1002, 1003, and 1007—

(1) A controlled substance in schedule I may—

(A) be imported into the United States for transshipment to another country, or

(B) be transferred or transshipped from one vessel, vehicle, or aircraft to another vessel, vehicle, or aircraft within the United States for immediate exportation,

if and only if it is so imported, transferred, or transshipped (i) for scientific, medical, or other legitimate purposes in the country of destination, and (ii) with the prior written approval of the Attorney General (which shall be granted or denied within 21 days of the request).

(2) A controlled substance in schedule II, III, or IV may be so imported, transferred, or transshipped if and only if advance notice is given to the Attorney General in accordance with regulations of the Attorney General.

POSSESSION ON BOARD VESSELS, ETC., ARRIVING IN OR DEPARTING FROM UNITED STATES

SEC. 1005. It shall be unlawful for any person to bring or possess on board any vessel or aircraft, or on board any vehicle of a carrier,

arriving in or departing from the United States or the customs territory of the United States, a controlled substance in schedule I or II or a narcotic drug in schedule III or IV, unless such substance or drug is a part of the cargo entered in the manifest or part of the official supplies of the vessel, aircraft, or vehicle. Ante, p. 1248.

EXEMPTION AUTHORITY

SEC. 1006. (a) The Attorney General may by regulation exempt from sections 1002 (a) and (b), 1003, 1004, and 1005 any individual who has a controlled substance (except a substance in schedule I) in his possession for his personal medical use, or for administration to an animal accompanying him, if he lawfully obtained such substance and he makes such declaration (or gives such other notification) as the Attorney General may by regulation require.

(b) The Attorney General may by regulation except any compound, mixture, or preparation containing any depressant or stimulant substance listed in paragraph (a) or (b) of schedule III or in schedule IV or V from the applicaton of all or any part of this title if (1) the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant or stimulant effect on the central nervous system, and (2) such ingredients are included therein in such combinations, quantity, proportion, or concentration as to vitiate the potential for abuse of the substances which do have a depressant or stimulant effect on the central nervous system.

PERSONS REQUIRED TO REGISTER

SEC. 1007. (a) No person may—

(1) import into the customs territory of the United States from any place outside thereof (but within the United States), or import into the United States from any place outside thereof, any controlled substance, or

(2) export from the United States any controlled substance in schedule I, II, III, or IV,

unless there is in effect with respect to such person a registration issued by the Attorney General under section 1008, or unless such person is exempt from registration under subsection (b).

(b) (1) The following persons shall not be required to register under the provisions of this section and may lawfully possess a controlled substance:

(A) An agent or an employee of any importer or exporter registered under section 1008 if such agent or employee is acting in the usual course of his business or employment.

(B) A common or contract carrier or warehouseman, or an employee thereof, whose possession of any controlled substance is in the usual course of his business or employment.

(C) An ultimate user who possesses such substance for a purpose specified in section 102(25) and in conformity with an exemption granted under section 1006(a). Ante, p. 1249.

(2) The Attorney General may, by regulation, waive the requirement for registration of certain importers and exporters if he finds it consistent with the public health and safety; and may authorize any such importer or exporter to possess controlled substances for purposes of importation and exportation.

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REGISTRATION REQUIREMENTS

SEC. 1008. (a) The Attorney General shall register an applicant to import or export a controlled substance in schedule I or II if he determines that such registration is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on the effective date of this section. In determining the public interest, the factors enumerated in paragraph (1) through (6) of section 303(a) shall be considered.

Ante, p. 1253.

(b) Registration granted under subsection (a) of this section shall not entitle a registrant to import or export controlled substances in schedule I or II other than those specified in the registration.

(c) The Attorney General shall register an applicant to import a controlled substance in schedule III, IV, or V or to export a controlled substance in schedule III or IV, unless he determines that the issuance of such registration is inconsistent with the public interest. In determining the public interest, the factors enumerated in paragraphs (1) through (6) of section 303(d) shall be considered.

(d) No registration shall be issued under this part for a period in excess of one year. Unless the regulations of the Attorney General otherwise provide, section 302(f), 304, 305, and 307 shall apply to persons registered under this section to the same extent such sections apply to persons registered under section 303.

Ante, pp. 1253-1258.

(e) The Attorney General is authorized to promulgate rules and regulations and to charge reasonable fees relating to the registration of importers and exporters of controlled substances under this section.

Rules and regulations.

(f) Persons registered by the Attorney General under this section to import or export controlled substances may import or export (and, for the purpose of so importing or exporting, may possess) such substances to the extent authorized by their registration and in conformity with the other provisions of this title and title II.

(g) A separate registration shall be required at each principal place of business where the applicant imports or exports controlled substances.

(h) Except in emergency situations as described in section 1002(a)(2)(A), prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in schedule I or II, and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, the Attorney General shall give manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

MANUFACTURE OR DISTRIBUTION FOR PURPOSES OF UNLAWFUL IMPORTATION

SEC. 1009. It shall be unlawful for any person to manufacture or distribute a controlled substance in schedule I or II—

(1) intending that such substance be unlawfully imported into the United States; or

(2) knowing that such substance will be unlawfully imported into the United States.

This section is intended to reach acts of manufacture or distribution committed outside the territorial jurisdiction of the United States. Any person who violates this section shall be tried in the United States district court at the point of entry where such person enters the United States, or in the United States District Court for the District of Columbia.

PROHIBITED ACTS A—PENALTIES

SEC. 1010. (a) Any person who—

(1) contrary to section 1002, 1003, or 1007, knowingly or intionally imports or exports a controlled substance,

(2) contrary to section 1005, knowingly or intentionally brings or possesses on board a vessel, aircraft, or vehicle a controlled substance, or

(3) contrary to section 1009, manufactures or distributes a controlled substance,

shall be punished as provided in subsection (b).

(b)(1) In the case of a violation under subsection (a) with respect to a narcotic drug in schedule I or II, the person committing such violation shall be imprisoned not more than fifteen years, or fined not more than $25,000, or both. If a sentence under this paragraph provides for imprisonment, the sentence shall include a special parole term of not less than three years in addition to such term of imprisonment. Ante, p. 1248.

(2) In the case of a violation under subsection (a) with respect to a controlled substance other than a narcotic drug in schedule I or II, the person committing such violation shall be imprisoned not more than five years, or be fined not more than $15,000, or both. If a sentence under this paragraph provides for imprisonment, the sentence shall, in in addition to such term of imprisonment, include (A) a special parole term of not less than two years if such controlled substance is in schedule I, II, III, or (B) a special parole term of not less than one year if such controlled substance is in schedule IV.

(c) A special parole term imposed under this section or section 1012 may be revoked if its terms and conditions are violated. In such circumstances the original term of imprisonment shall be increased by the period of the special parole term and the resulting new term of imprisonment shall not be diminished by the time which was spent on special parole. A person whose special parole term has been revoked may be required to serve all or part of the remainder of the new term of imprisonment. The special term provided for in this section and in section 1012 is in addition to, and not in lieu of, any other parole provided for by law.

PROHIBITED ACTS B—PENALTIES

SEC. 1011. Any person who violates section 1004 shall be subject to the following penalties:

(1) Except as provided in paragraph (2), any such person shall, with respect to any such violation, be subject to a civil penalty of not more than $25,000. Sections 402 (c)(1) and (c)(3) shall apply to any civil penalty assessed under this paragraph. Ante, p. 1262.

(2) If such a violation is prosecuted by an information or indictment which alleges that the violation was committed knowingly or intentionally and the trier of fact specifically finds that the violation was so committed, such person shall be sentenced to imprisonment for not more than one year or a fine of not more than $25,000 or both.

SECOND OR SUBSEQUENT OFFENSES

SEC. 1012. (a) Any person convicted of any offense under this part is, if the offense is a second or subsequent offense, punishable by a term of imprisonment twice that otherwise authorized, by twice the fine otherwise authorized, or by both. If the conviction is for an offense

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punishable under section 1010(b), and if it is the offender's second or subsequent offense, the court shall impose, in addition to any term of imprisonment and fine, twice the special parole term otherwise authorized.

(b) For purposes of this section, a person shall be considered convicted of a second or subsequent offense if, prior to the commission of such offense, one or more prior convictions of him for a felony under any provision of this title or title II or other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant drugs, have become final.

Ante, p. 1242.

(c) Section 411 shall apply with respect to any proceeding to sentence a person under this section.

Ante, p. 1269.

ATTEMPT AND CONSPIRACY

SEC. 1013. Any person who attempts or conspires to commit any offense defined in this title is punishable by imprisonment or fine or both which may not exceed the maximum punishment prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

ADDITIONAL PENALTIES

SEC. 1014. Any penalty imposed for violation of this title shall be in addition to, and not in lieu of, any civil or administrative penalty or sanction authorized by law.

APPLICABILITY OF PART E OF TITLE II

SEC. 1015. Part E of title II shall apply with respect to functions of the Attorney General (and of officers and employees of the Bureau of Narcotics and Dangerous Drugs) under this title, to administrative and judicial proceedings under this title, and to violations of this title, to the same extent that such part applies to functions of the Attorney General (and such officers and employees) under title II, to such proceedings under title II, and to violations of title II. For purposes of the application of this section to section 510, any reference in such section 510 to "this title" shall be deemed to be a reference to title III, any reference to section 303 shall be deemed to be a reference to section 1008, and any reference to section 302(d) shall be deemed to be a reference to section 1007(b)(2).

Ante, p. 1270.
Ante, p. 1274.
Ante, p. 1285.
Ante, p. 1253.

AUTHORITY OF SECRETARY OF TREASURY

SEC. 1016. Nothing in this Act shall derogate from the authority of the Secretary of the Treasury under the customs and related laws.

PART B—AMENDMENTS AND REPEALS, TRANSITIONAL AND EFFECTIVE DATE PROVISIONS

REPEALS

SEC. 1101. (a) The following provisions of law are repealed:

(1) The Act of February 23, 1887 (21 U.S.C. 191-193).

24 Stat. 409.

(2) The Narcotic Drugs Import and Export Act (21 U.S.C. 171, 173, 174-184, 185).

38 Stat. 275.

(3) The Act of March 28, 1928 (31 U.S.C. 529a).

53 Stat. 1262.

(4) Sections 2(b), 6, 7, and 8 of the Act of June 14, 1930 (21 U.S.C. 162(b), 173a, 197, 198).

46 Stat. 585; 70 Stat. 575.

(5) The Act of July 3, 1930 (21 U.S.C. 199). 46 Stat. 850.
(6) Section 6 of the Act of March 28, 1928 (31 U.S.C. 529g). 53 Stat. 1263.
(7) The Opium Poppy Control Act of 1942 (21 U.S.C. 188–188n). 56 Stat. 1045.
(8) Section 15 of the Act of August 1, 1956 (48 U.S.C. 1421m). 70 Stat. 910.
(9) The Act of July 11, 1941 (21 U.S.C. 184a). 55 Stat. 584.
(10) The Narcotics Manufacturing Act of 1960 (21 U.S.C. 501–517). 74 Stat. 55.

(b)(1)(A) Chapter 68 of title 18 of the United States Code (relating to narcotics) is repealed. 70 Stat. 572. 18 USC 1401-1405.

(B) The item relating to such chapter 68 in the analysis of part I of such title 18 is repealed.

(2)(A) Section 3616 of title 18 of the United States Code (relating to use of confiscated motor vehicles) is repealed. 62 Stat. 840.

(B) The item relating to such section 3616 in the analysis of chapter 229 of such title 18 is repealed. 68A Stat. 549.

(3)(A) Subchapter A of chapter 39 of the Internal Revenue Code of 1954 (relating to narcotic drugs and marihuana) is repealed. 26 USC 4701–4776.

(B) The table of subchapters of such chapter 39 is amended by striking out

"SUBCHAPTER A. Narcotic drugs and marihuana."

(4)(A) Sections 7237 (relating to violation of laws relating to narcotic drugs and to marihuana) and 7238 (relating to violation of laws relating to opium for smoking) of the Internal Revenue Code of 1954 are repealed. 70 Stat. 568; 80 Stat. 1449.

(B) The table of sections of part II of subchapter A of chapter 75 of the Internal Revenue Code of 1954 is amended by striking out the items relating to such sections 7237 and 7238. 26 USC 7237, 7238.

(5)(A) Section 7491 of the Internal Revenue Code of 1954 (relating to burden of proof of exemptions in case of marihuana offenses) is repealed. 26 USC 7491.

(B) The table of sections for subchapter E of chapter 76 of the Internal Revenue Code of 1954 is amended by striking out the item relating to such section 7491.

CONFORMING AMENDMENTS

SEC. 1102. (a) Section 4901(a) of the Internal Revenue Code of 1954 is amended by striking out the comma immediately before "4461" and inserting in lieu thereof "or", and by striking out ", 4721 (narcotic drugs), or 4751 (marihuana)". 79 Stat. 149.

(b) Section 4905(b)(1) of the Internal Revenue Code of 1954 (relating to registration) is amended by striking out ", narcotics, marihuana," and ", 4722, 4753,".

(c) Section 6808 of the Internal Revenue Code of 1954 (relating to special provisions relating to stamps) is amended by striking out paragraph (8).

(d) Section 7012 of the Internal Revenue Code of 1954 (relating to cross references) is amended by striking out subsections (a) and (b).

(e) Section 7103(d)(3) of the Internal Revenue Code of 1954 (relating to bonds required with respect to certain products) is amended by striking out subparagraph (D).

(f) Section 7326 of the Internal Revenue Code of 1954 (relating to disposal of forfeited or abandoned property in special cases) is amended by striking out subsection (b). 72 Stat. 1429.

(g)(1) Section 7607 of the Internal Revenue Code of 1954 (relating to additional authority for Bureau of Narcotics and Bureau of Customs) is amended— 70 Stat. 570.

(A) by striking out "The Commissioner, Deputy Commissioner, Assistant to the Commissioner, and agents of the Bureau of Narcotics of the Department of the Treasury, and officers" and inserting in lieu thereof "Officers";

(B) by striking out in paragraph (2) "narcotic drugs (as defined in section 4731) or marihuana (as defined in section 4761)" and inserting in lieu thereof "narcotic drugs (as defined in section 102(16) of the Controlled Substances Act) or marihuana (as defined in section 102(15) of the Controlled Substances Act)"; and

(C) by striking out "BUREAU OF NARCOTICS AND" in the section heading.

(2) The item relating to section 7607 in the table of contents of subchapter A of chapter 78 of the Internal Revenue Code of 1954 is amended by striking out "Bureau of Narcotics and".

70 Stat. 570.

(h) Section 7609(a) of the Internal Revenue Code of 1954 (relating to cross references) is amended by striking out paragraphs (3) and (4).

72 Stat. 1430.

(i) Section 7641 of the Internal Revenue Code of 1954 (relating to supervision of operations of certain manufacturers) is amended by striking out "opium suitable for smoking purposes,".

68A Stat. 905.
26 USC 7641.

(j) Section 7651 of the Internal Revenue Code of 1954 (relating to administration and collection of taxes in possessions) is amended by striking out "and in sections 4705(b), 4735, and 4762 (relating to taxes on narcotic drugs and marihuana)".

(k) Section 7655(a) of the Internal Revenue Code of 1954 (relating to cross references) is amended by striking out paragraphs (3) and (4).

(l) Section 2901(a) of title 28 of the United States Code is amended by striking out "as defined by section 4731 of the Internal Revenue Code of 1954, as amended," and inserting in lieu thereof "as defined by section 102(16) of the Controlled Substances Act".

80 Stat. 1438.

(m) The last sentence of the second paragraph of section 584 of the Act of June 17, 1930 (19 U.S.C. 1584), is amended to read as follows: "As used in this paragraph, the terms 'opiate' and 'marihuana' shall have the same meaning given those terms by sections 102(17) and 102(15), respectively, of the Controlled Substances Act."

58 Stat. 722;
60 Stat. 39.

(n) (1) The first section of the Act of August 7, 1939 (31 U.S.C. 529a), is repealed.

Repeal.
53 Stat. 1262.

(2) Section 3 of such Act (31 U.S.C. 529d) is amended by striking out "or the Commissioner of Narcotics, as the case may be,".

(3) Section 4 of such Act (31 U.S.C. 529e) is amended by striking out "or narcotics" each place it appears.

(4) Section 5 of such Act (31 U.S.C. 529f) is amended by striking out "or narcotics" in the first sentence.

(o) Section 308(c)(2) of the Act of August 27, 1935 (40 U.S.C. 304m) is amended by striking out "Narcotic Drug Import and Export Act" and inserting in lieu thereof "Controlled Substances Act".

49 Stat. 880.

(p) Paragraph (a) of section 301 of the Narcotic Addict Rehabilitation Act of 1966 (42 U.S.C. 3411) is amended by striking out "as defined in section 4731 of the Internal Revenue Code of 1954, as amended," and inserting in lieu thereof "as defined in section 102(16) of the Controlled Substances Act".

80 Stat. 1444.

(q) Paragraph (a) of the first section of the Act of July 15, 1954 (46 U.S.C. 239a) is amended to read as follows:

68 Stat. 484.

"(a) The term 'narcotic drug' shall have the meaning given that term by section 102(16) of the Controlled Substances Act and shall also include marihuana as defined by section 102(15) of such Act."

(r) Paragraph (d) of section 7 of the Act of August 9, 1939 (49 U.S.C. 787) is amended to read as follows: 53 Stat. 1292.

"(d) The term 'narcotic drug' shall have the meaning given that term by section 102(16) of the Controlled Substances Act and shall also include marihuana as defined by section 102(15) of such Act;" "Narcotic drug."

(s) Paragraph (a) of section 4251 of title 18, United States Code, is amended by striking out "as defined in section 4731 of the Internal Revenue Code of 1954, as amended," and inserting in lieu thereof "as defined in section 102(16) of the Controlled Substances Act". 80 Stat. 1442.

(t) The first section of the Act of August 11, 1955 (21 U.S.C. 198a), is amended to read as follows: "That for the purpose of any investigation which, in the opinion of the Secretary of the Treasury, is necessary and proper to the enforcement of section 545 of title 18 of the United States Code (relating to smuggling goods into the United States) with respect to any controlled substance (as defined in section 102 of the Controlled Substances Act), the Secretary of the Treasury may administer oaths and affirmations, subpena witnesses, compel their attendance, take evidence, and require the production of records (including books, papers, documents, and tangible things which constitute or contain evidence) relevant or material to the investigation. The attendance of witnesses and the production of records may be required from any place within the customs territory of the United States, except that a witness shall not be required to appear at any hearing distant more than 100 miles from the place where he was served with subpena. Witnesses summoned by the Secretary shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. Oaths and affirmations may be made at any place subject to the jurisdiction of the United States." Investigations, subpoena power. 69 Stat. 684. 62 Stat. 716. Witnesses, travel expenses.

PENDING PROCEEDINGS

SEC. 1103. (a) Prosecutions for any violation of law occurring prior to the effective date of section 1101 shall not be affected by the repeals or amendments made by such section or section 1102, or abated by reason thereof.

(b) Civil seizures or forfeitures and injunctive proceedings commenced prior to the effective date of section 1101 shall not be affected by the repeals or amendments made by such section or section 1102, or abated by reason thereof.

PROVISIONAL REGISTRATION

SEC. 1104. (a) (1) Any person—

(A) who is engaged in importing or exporting any controlled substance on the day before the effective date of section 1007,

(B) who notifies the Attorney General that he is so engaged, and

(C) who is registered on such day under section 510 of the Federal Food, Drug, and Cosmetic Act or under section 4722 of the Internal Revenue Code of 1954, 76 Stat. 794; 79 Stat. 231. 21 USC 360. 68A Stat. 555. 26 USC 4722.

shall, with respect to each establishment for which such registration is in effect under any such section, be deemed to have a provisional registration under section 1008 for the import or export (as the case may be) of controlled substances.

(2) During the period his provisional registration is in effect under this section, the registration number assigned such person under such section 510 or under such section 4722 (as the case may be) shall be his registration number for purposes of part A of this title. Ante, p. 1285.

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Ante, p. 1255.

(b) The provisions of section 304, relating to suspension and revocation of registration, shall apply to a provisional registration under this section.

(c) Unless sooner suspended or revoked under subsection (b), a provisional registration of a person under subsection (a)(1) of this section shall be in effect until—

(1) the date on which such person has registered with the Attorney General under section 1008 or has had his registration denied under such section, or

(2) such date as may be prescribed by the Attorney General for registration of importers or exporters, as the case may be,

whichever occurs first.

EFFECTIVE DATES AND OTHER TRANSITIONAL PROVISIONS

SEC. 1105. (a) Except as otherwise provided in this section, this title shall become effective on the first day of the seventh calendar month that begins after the day immediately preceding the date of enactment.

(b) Sections 1000, 1001, 1006, 1015, 1016, 1103, 1104, and this section shall become effective upon enactment.

Ante, pp. 1284, 1257.

(c)(1) If the Attorney General, pursuant to the authority of section 704(c) of title II, postpones the effective date of section 306 (relating to manufacturing quotas) for any period beyond the date specified in section 704(a) and such postponement applies to narcotic drugs, the repeal of the Narcotics Manufacturing Act of 1960 by paragraph (10) of section 1101(a) of this title is hereby postponed for the same period, except that the postponement made by this paragraph shall not apply to the repeal of sections 4, 5, 13, 15, and 16 of that Act.

(2) Effective for any period of postponement, by paragraph (1) of this subsection, of the repeal of provisions of the Narcotics Manufacturing Act of 1960, that Act shall be applied subject to the following modifications:

"Narcotic drug." Ante, p. 1244.

(A) The term "narcotic drug" shall mean a narcotic drug as defined in section 102(16) of title II, and all references, in the Narcotics Manufacturing Act of 1960, to a narcotic drug as defined by section 4731 of the Internal Revenue Code of 1954 are amended to refer to a narcotic drug as defined by such section 102(16).

(B) On and after the date prescribed by the Attorney General pursuant to clause (2) of section 703(c) of title II, the requirements of a manufacturer's license with respect to a basic class of narcotic drug under the Narcotics Manufacturing Act of 1960, and of a registration under section 4722 of the Internal Revenue Code of 1954 as a prerequisite to issuance of such a license, shall be superseded by a requirement of actual registration (as distinguished from provisional registration) as a manufacturer of that class of drug under section 303(a) of title II.

Ante, p. 1253.

(C) On and after the effective date of the repeal of such section 4722 by section 1101(b)(3) of this title, but prior to the date specified in subparagraph (B) of this paragraph, the requirement of registration under such section 4722 as a prerequisite of a manufacturer's license under the Narcotics Manufacturing Act of 1960 shall be superseded by a requirement of either (i) actual registration as a manufacturer under section 303 of title II or (ii) provisional registration (by virtue of a preexisting registration under such section 4722) under section 703 of title II.

(d) Any orders, rules, and regulations which have been promulgated under any law affected by this title and which are in effect on the day preceding enactment of this title shall continue in effect until modified, superseded, or repealed.

TITLE IV—REPORT ON ADVISORY COUNCILS

REPORT ON ADVISORY COUNCILS

Reports to Congress.

SEC. 1200. (a) Not later than March 31 of each calendar year after 1970, the Secretary of the Department of Health, Education, and Welfare shall submit a report on the activities of advisory councils (established or organized pursuant to any applicable statute of the Public Health Service Act, Public Law 410, Seventy-eighth Congress, as amended, or the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963, Public Law 88-164, as amended) to the Committee on Labor and Public Welfare of the Senate and the Committee on Interstate and Foreign Commerce of the House of Representatives. Such report shall contain, at least, a list of all such advisory councils, the names and occupations of their members, a description of the function of each advisory council, and a statement of the dates of the meetings of each advisory council.

77 Stat. 282. 42 USC 2661 note.

(b) If the Secretary determines that a statutory advisory council is not needed or that the functions of two or more statutory advisory councils should be combined, he shall include in the report a recommendation that such advisory council be abolished or that such functions be combined.

"Statutory advisory council."

(c) As used in this section, the term "statutory advisory council" means any committee, board, commission, council, or other similar group established or organized pursuant to any applicable statute to advise and make recommendations with respect to the administration or improvement of an applicable program or other related matter.

Approved October 27, 1970.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 91-1444 (pts. 1 and 2) (Comm. on Interstate and Foreign Commerce) and No. 91-1603 (Comm. of Conference).
SENATE REPORT No. 91-613 accompanying S. 3246 (Comm. on the Judiciary).
CONGRESSIONAL RECORD, Vol. 116 (1970):
Jan. 23, 24, 26-28, S. 3246 considered and passed Senate.
Sept. 23, 24, considered and passed House.
Oct. 6, 7, considered and passed Senate, amended.
Oct. 8, 14, House agreed to conference report.
Oct. 14, Senate agreed to conference report.

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STATE BY STATE SURVEY OF CURRENT MARIHUANA LAWS WITH PENALITIES FOR FIRST OFFENSES

State	Year of Law[1]	Uniform Act	Classification of Marihuana[2]	Conditional Discharge for First Offense Possession Available[3]	Possession for Personal Use[4]		Possession[5]	Sale[6]	Cultivation	Sale to A Minor
					Relevant Amount	Penalty				
Alabama	1971	yes	hallucinogen		amount discretionary for the court	NMT 1 yr. +/or NMT $1,000[7]	2-15 yrs. +/or $25,000	2-15 yrs. +/or $25,000	2-15 yrs. +/or $25,000	4-30 yrs. +/or NMT $50,000
Alaska	1969		hallucinogen		no separate penalty		NMT 1 yr. +/or NMT $1,000 or custody for rehabilitation	NMT 25 yrs. +/or NMT $20,000	no separate offense	up to life
Arizona	1969		narcotic		no separate penalty		1-10 yrs. & NMT $50,000 OR NMT 1 yr. in county jail +/or NMT $1,000[8]	5 yrs.-life & NMT $50,000 (parole after 3 yrs.)	1-10 yrs. & NMT $50,000 OR NMT 1 yr. in county jail +/or NMT $1,000	10 yrs.-life & NMT $50,000 (parole after 5 yrs.)
Arkansas	1971	yes	hallucinogen	yes	no separate penalty		NMT 1 yr. +/or NMT $250	NMT 5 yrs. +/or NMT $15,000	NMT 5 yrs. +/or NMT $15,000	NMT 10 yrs. +/or NMT $15,000
California	1970		narcotic		no separate penalty		NMT 1 yr. in county jail OR 1-10 yrs. + NMT $20,000	5 yrs.-life + NMT $20,000 (parole after 3 yrs.)	1-10 yrs. (no release until served at least 1 yr.)	10 yrs.-life + NMT $20,000 (parole after 5 yrs.; no probation)
Colorado	1971		narcotic	yes	NMT 1/2 oz.	NMT 1 yr. +/or NMT $500 or NMT 1 yr. probation with psychiatric treatment	2-15 yrs. + NMT $10,000	2-15 yrs. + NMT $10,000	2-15 yrs. + NMT $10,000	life
Connecticut	1971		controlled drug		no separate penalty		NMT 1 yr. +/or NMT $1,000	5-10 yrs. + NMT $3,000 over 1 kilo - 10-20 yrs. + NMT $3,000	5-10 yrs. + NMT $3,000	no separate offense
Delaware	1970		dangerous drug	yes	no separate penalty		NMT 2 yrs. + NMT $500	5-10 yrs. + $1,000 to $10,000	NMT 5 yrs. + NMT $3,000	7-15 yrs. + fined in discretion of court
Florida	1971		narcotic		NMT 5 g.	NMT 1 yr. or NMT $1,000	NMT 5 yrs. +/or NMT $5,000	NMT 10 yrs. + NMT $10,000 (no probation)	NMT 10 yrs. + NMT $10,000	10 yrs.-life + NMT $10,000 (no suspension)
Georgia	1970		depressant or stimulant	yes	NMT 1 oz.	NMT 1 yr. +/or NMT $1,000	NMT 2 yrs. +/or NMT $2,000	NMT 2 yrs. +/or NMT $2,000	NMT 2 yrs. +/or NMT $2,000	NMT 5 yrs. +/or NMT $5,000
Hawaii	1969		narcotic		no separate penalty		NMT 1 yr. OR 1-5 yrs.	NMT 10 yrs. at hard labor + NMT $1,000	NMT 1 yr. OR 1-5 yrs.	NMT 20 yrs. at hard labor + NMT $1,000

State	Year of Law	Uniform Act	Classification of Marihuana	Conditional Discharge for First Offense Possession Available	Possession for Personal Use		Possession	Sale	Cultivation	Sale to A Minor
					Relevant Amount	Penalty				
Idaho	1971	yes	hallucinogen	yes	no separate penalty		NMT 6 mos. +/or NMT $300	NMT 5 yrs. +/or NMT $15,000	NMT 5 yrs. +/or NMT $15,000	NMT 10 yrs. +/or NMT $15,000
Illinois	1971	yes	marihuana	yes	2.5 g. or less 2.5 g. -10 g. 10 g. -30g.	NMT 90 days NMT 180 days NMT 1 yr.	30 g. -500 g., 1-3 yrs.; more than 500 g., 1-5 yrs.	2.5 g. or less, NMT 180 days; 2.5 g. -10g, NMT 1 yr. OR 1-2 yrs.; 10 g. -30 g., NMT 1 yr. OR 1-3 yrs.; 30 g. -500 g., 1-4 yrs.; over 500 g., 1-7 yrs.	NMT 1 yr. +/or NMT $1,500	2.5 g. or less, NMT 360 days; 2.5 g. -10 g., NMT 2 yrs. OR 2-4 yrs.; 10 g. -30 g., NMT 2yrs. OR 2-6 yrs.; 30 g. -500 g., 2-8 yrs.; over 500 g., 2-14 yrs.
Indiana	1971		dangerous drug		NMT 25 g. of marihuana or 5 g. of hashish	30 days-1 yr. + NMT $500	1-10 yrs. + NMT $1,000	1-10 yrs. + NMT $1,000	1-10 yrs. + NMT $1,000	no separate offense
Iowa	1971	yes	hallucinogen	yes	no separate penalty		NMT 6 mos. +/or NMT $1,000	NMT 5 yrs. + NMT $1,000	NMT 5 yrs. + NMT $1,000	NMT 7-1/2 yrs. +/or NMT $1,000
Kansas	1971		narcotic		no separate penalty		NMT 1 yr. +/or NMT $5,000	minimum 1-3 yrs., maximum NMT 10 yrs. +/or NMT $5,000	minimum 1-3 yrs., maximum NMT 10 yrs. +/or NMT $5,000	no separate offense
Kentucky	1970		dangerous drug	yes	no separate penalty		treatment and rehabilitation NMT 1 yr. or NMT 6 mos. +/or NMT $500	NMT 5 yrs. +/or NMT $5,000	NMT 5 yrs. +/or NMT $5,000	NMT 10 yrs. +/or NMT $20,000
Louisiana	1970	yes	hallucinogen	yes	no separate penalty		NMT 1 yr. +/or NMT $500	NMT 10 yrs. at hard labor +/or NMT $15,000	NMT 10 yrs. at hard labor +/or NMT $15,000	NMT 20 yrs. at hard labor +/or NMT $15,000
Maine	1971		marihuana		no separate penalty		NMT 11 mos. + NMT $1,000	NMT 5 yrs. +/or NMT $1,000	NMT 11 mos. + NMT $1,000	no separate offense
Maryland	1970	yes	hallucinogen	yes	no separate penalty		NMT 1 yr. +/or NMT $1,000	NMT 5 yrs. +/or NMT $15,000	NMT 5 yrs. +/or NMT $15,000	no separate offense
Massachusetts	1971	yes	hallucinogen	yes	no separate penalty		NMT 6 mos. probation	NMT 2 yrs. +/or NMT $5,000	NMT 2 yrs. +/or NMT $5,000	no separate offense

State	Year of Law	Uniform Act	Classification of Marihuana	Conditional Discharge for First Offense Possession Available	Possession for Personal Use: Relevant Amount	Possession for Personal Use: Penalty	Possession	Sale	Cultivation	Sale to A Minor
Michigan	1971	yes	hallucinogen	yes	no separate penalty		NMT 90 days +/or NMT $500	NMT 5 yrs. +/or NMT $5,000	NMT 5 yrs. +/or NMT $5,000	NMT 10 yrs. +/or NMT $5,000
Minnesota	1971	yes	hallucinogen	yes	NMT 1-1/2 oz. of marihuana	NMT 1 yr. +/or NMT $1,000	NMT 3 yrs. +/or NMT $1,000	NMT 5 yrs. +/or NMT $15,000	NMT 5 yrs. +/or NMT $15,000	NMT 10 yrs. +/or NMT $10,000
Mississippi	1971	yes	hallucinogen		no separate penalty		NMT 6 mos. +/or NMT $500 NMT 4 yrs. +/or NMT $2,000[9]	NMT 4 yrs. +/or NMT $2,000	NMT 4 yrs. +/or NMT $2,000	NMT 8 yrs. +/or NMT $2,000
Missouri	1971	yes	hallucinogen	yes	NMT 35 g. of marihuana or 5 g. of hashish	NMT 1 yr. +/or NMT $1,000	NMT 5 yrs. OR NMT 1 yr. in county jail +/or NMT $1,000	5 yr. to life	NMT 20 yrs. in penitentiary OR 6 mos.-1 yr. in county jail	5 yrs. to life or death
Montana	1971		hallucinogen or dangerous drug		NMT 60 g. of marihuana or 1 g. of hashish	NMT 1 yr. +/or NMT $1,000	NMT 5 yrs.; if shown to be habitual user then committed to rehabilitation institution	1 yr. to life	1 yr. to life	no separate offense
Nebraska	1971	yes	hallucinogen		NMT 1 lb.	NMT 7 days +/or NMT $500	1 yr. in prison OR NMT 6 mos. in jail +/or NMT $500	1-5 yrs. OR NMT 6 mos. in county jail +/or NMT $2,000	1-5 yrs. OR NMT 6 mos. in county jail +/or NMT $2,000	no separate offense
Nevada	1971	yes	hallucinogen	yes	NMT 1 oz.	1-6 yrs. + NMT $2,000 OR NMT 1 yr. in county jail + NMT $1,000	1-6 yrs. + NMT $2,000	1-20 yrs. + NMT $5,000	1-6 yrs. + NMT $2,000	life with possible parole after 7 yrs. + NMT $5,000
New Hampshire	1971		controlled drug		NMT 1 lb.	NMT 1 yr. +/or NMT $500	NMT 5 yrs. +/or NMT $2,000	NMT 10 yrs. +/or NMT $2,000	NMT 10 yrs. +/or NMT $2,000	no separate offense
New Jersey	1970	yes	hallucinogen	yes	NMT 25 g. of marihuana or 5 g. of hashish	NMT 6 mos. +/or NMT $500 (A quasi-criminal non-indictable offense)	NMT 5 yrs. +/or NMT $15,000	NMT 5 yrs. +/or NMT $15,000	NMT 5 yrs. +/or NMT $15,000	NMT 10 yrs. +/or NMT $15,000
New Mexico	1972	yes	hallucinogen	yes	NMT 1 oz. More than 1 oz., less than 8 oz.	$50-$100 + NMT 15 days $100-$1,000 +/or NMT 1 yr.	8 oz. or more: 1-5 yrs. +/or $5,000	1-5 yrs. +/or NMT $5,000	10-50 yrs. +/or NMT $10,000	2-10 yrs. +/or NMT $5,000

State	Year of Law	Uniform Act	Classification of Marihuana	Conditional Discharge for First Offense Possession Available	Possession for Personal Use					
					Relevant Amount	Penalty	Possession	Sale	Cultivation	Sale to A Minor
New York	1971		narcotic	yes	NMT 1/4 oz.	NMT 1 yr.	25-99 cigarettes or more than 1/4 oz.: 2-1/3-7 yrs. 100 or more cigarettes or more than 1 oz.: 5-15 yrs.	5-15 yrs.	NMT 1 yr.	5-1/3-25 yrs.
North Carolina	1971	yes	marihuana	yes	no separate penalty		NMT 6 mos. +/or NMT $500	NMT 5 yrs. +/or NMT $5,000	NMT 5 yrs. +/or NMT $5,000	no separate offense
North Dakota	1971	yes	hallucinogen	yes	no separate penalty		NMT $500 +/or NMT 1 yr.	NMT 10 yrs. +/or NMT $5,000	NMT 10 yrs. +/or NMT $5,000	NMT 20 yrs. +/or NMT $5,000
Ohio	1970		hallucinogen		no separate penalty		NMT 1 yr. +/or NMT $1,000	20-40 yrs.	2-15 yrs. + NMT $10,000	30 yrs.-life
Oklahoma	1971	yes	hallucinogen	yes	no separate penalty		NMT 1 yr.	2-10 yrs. + NMT $5,000	2-10 Yrs. + NMT $5,000	4-20 yrs. + NMT $10,000
Oregon	1971		narcotic		NMT 1 oz.	NMT 1 yr. +/or NMT $1,000	NMT 10 yrs. +/or NMT $2,500	NMT 10 yrs. +/or NMT $2,500	NMT 10 yrs. +/or NMT $2,500	NMT 20 yrs. +/or NMT $2,500
Pennsylvania	1970		narcotic		no separate penalty		2-5 yrs. + NMT $2,000	minimum 5-20 yrs. + NMT $5,000	NMT 1 yr. +/or NMT $5,000	no separate offense
Rhode Island	1970		narcotic		no separate penalty		NMT 15 yrs. +/or NMT $10,000	NMT 40 yrs.	NMT 20 yrs.	up to life (no probation)
South Carolina	1971	yes	hallucinogen	yes	NMT 28 g. of marihuana or 10 g. of hashish	NMT 3 mos. +/or NMT $100	NMT 6 mos. +/or NMT $1,000	NMT 5 yrs. +/or NMT $5,000	NMT 5 yrs. +/or NMT $5,000	NMT 10 yrs. +/or NMT $10,000
South Dakota	1971	yes	hallucinogen	yes	NMT 1 oz.	NMT 1 yr. +/or NMT $500	2-5 yrs. +/or NMT $5,000	5-10 yrs. +/or NMT $5,000	5-10 yrs. +/or NMT $5,000	10-20 yrs. +/or NMT $5,000
Tennessee	1971	yes	hallucinogen		no separate penalty		NMT 1 yr. +/or NMT $1,000 or treatment in state facility	1-5 yrs. + NMT $3,000	1-5 yrs. + NMT $3,000	2-10 yrs. + NMT $5,000
Texas	1971		narcotic		no separate penalty		2 yrs.-life	5 yrs.-life	2 yrs.-life	5 yrs.-life
Utah	1971	yes	hallucinogen	yes	no separate penalty		NMT 6 mos. +/or NMT $299	NMT 5 yrs. +/or NMT $5,000	NMT 5 yrs. +/or NMT $5,000	NMT 10 yrs. +/or NMT $5,000

State	Year of Law	Uniform Act	Classification of Marihuana	Conditional Discharge for First Offense Possession Available	Possession for Personal Use		Possession	Sale	Cultivation	Sale to A Minor
					Relevant Amount	Penalty				
Vermont	1971		regulated drug		NMT 1/2 oz.	NMT 6 mos. +/or NMT $500	1/2 oz.-2 oz., NMT 2 yrs. +/or $2,000; 2 or more oz., NMT 5 yrs. +/or NMT $5,000	NMT 5 yrs. + NMT $10,000	NMT 5 yrs. + NMT $10,000	NMT x yrs. + NMT $x,000
Virginia	1971	yes	hallucinogen		no separate penalty		NMT 1 yr. +/or NMT $1,000	1-40 yrs. +/or NMT $25,000	1-40 yrs. +/or NMT $25,000	5-40 yrs. +/or NMT $50,000
Washington	1971	yes	hallucinogen		NMT 40 g.	NMT 90 days +/or NMT $250	NMT 5 yrs. +/or NMT $10,000	NMT 5 yrs. +/or NMT $10,000	NMT 5 yrs. +/or NMT $10,000	NMT 10 yrs. +/or NMT $10,000
West Virginia	1971	yes	hallucinogen	yes	NMT 15 g.	conditional discharge mandatory for first offense	90 days-6 mos. +/or NMT $1,000	1-5 yrs. +/or NMT $15,000	1-5 yrs. +/or NMT $15,000	2-10 yrs. +/or NMT $15,000
Wisconsin	1969		dangerous drug	yes	no separate penalty		NMT 1 yr. +/or NMT $500	NMT 5 yrs. +/or NMT $5,000	no separate offense	NMT 15 yrs.
Wyoming	1971	yes	hallucinogen	yes	no separate penalty		NMT 6 mos. + NMT $1,000	NMT 10 yrs. +/or NMT $10,000	NMT 6 mos. +/or NMT $1,000	NMT 20 yrs. +/or NMT $20,000
District of Columbia	1970		narcotic		no separate penalty		NMT 1 yr. +/or $100-$1,000	NMT 1 yr. +/or $100-$1,000	NMT 1 yr. +/or $100-$1,000	no separate offense
Guam	1970	yes	hallucinogen	yes	no separate penalty		NMT 1 yr. +/or NMT $1,000	NMT 2 yrs. +/or NMT $1,000	NMT 2 yrs. +/or NMT $1,000	NMT 4 yrs. +/or NMT $4,000
Puerto Rico	1971	yes	hallucinogen	yes	no separate penalty		1-3 yrs. +/or NMT $5,000	5-20 yrs. +/or NMT $20,000	5-20 yrs. +/or NMT $20,000	10-30 yrs. +/or NMT $10,000
Virgin Islands	1971	yes	hallucinogen	yes	no separate penalty		NMT 1 yr. +/or $5,000	NMT 5 yrs. +/or NMT $15,000	NMT 5 yrs. +/or NMT $15,000	NMT 15 yrs. +/or NMT $45,000

[1] "Year of Law" means the last year in which the jurisdiction's marihuana laws were revised or amended in any way. This includes those jurisdictions that enacted entirely new laws, as well as those that may have only changed a penalty provision.

[2] The Uniform Controlled Substances Act classifies marihuana as a hallucinogen. This is the modern trend, as most jurisdictions have come to realize that scientifically marihuana is not a narcotic.

[3] Conditional discharge is designed to permit a judge to place a first offender on probation in lieu of sentencing him to prison. It is usually applicable only to cases of first offense possession, and is available only once with respect to any person. In addition, this provision calls for confidentiality of the defendant's record upon fulfillment of all the terms and conditions of his probation. This precludes any criminal record from following the individual in later life.

[4] Some jurisdictions have created a separate penalty for possession of a limited amount of marihuana. While state laws usually do not specify their reasons, it may be inferred these states consider possession of less than the designated amount to be possession for personal use.

[5]In states with no special provision for possession of small amounts, the "possession" offense covers possession of any amount. In states which do have such a special provision, "possession" offense covers possession of over the specified amount. Possession does not include possession with intent to sell. This offense is usually punishable as if it were the actual offense of sale. Thus, the penalty for possession with intent to sell is the same as that for sale in 36 jurisdictions. The following 12 jurisdictions do not have a penalty for possession with intent to sell: Colorado, Florida, Georgia, Indiana, Maine, Mississippi, Missouri, Montana, Nevada, Pennsylvania, Texas, and the District of Columbia. Six other states have made possession with intent to sell a separate offense from sale: Arizona, California, New York, Ohio, Rhode Island, and Vermont.

[6]This heading may include delivery, distribution, dispensing, furnishing, transportation, trafficking or transfer according to the individual jurisdiction.

[7]"NMT" designates not more than.

[8]There are several jurisdictions that give prosecutorial and sentencing discretion as to whether a particular offender is to be treated as a felon or a misdemeanant. This is indicated on the chart by use of "OR" in the appropriate column.

[9]In the Mississippi Uniform Act, two separate penalties for possession were mistakenly included. The Mississippi Legislature is currently attempting to correct this error.

COMMONWEALTH OF VIRGINIA
STATE BOARD OF EDUCATION
RICHMOND, VIRGINIA 23216

Approved January 29, 1971

GUIDELINES FOR ESTABLISHING A POLICY AND PROCEDURES FOR DRUG DISCOVERY IN SCHOOLS

As one of its major tasks, the school is responsible for providing a safe and healthful environment conducive to wholesome living and effective learning. To help provide such an environment at a time when drug abuse is a serious social and health problem, school divisions should establish policies and procedures relative to drug abuse in the schools and on school property. This is necessary so that all school personnel (students as well as employees), local health agencies, local law enforcement officials, parents, and citizens of the community are aware of the role the school will play in any situation involving the use of drugs in school. The Guidelines for Establishing A Policy and Procedures for Drug Discovery in Schools have been prepared to assist school divisions in developing a plan of action to be followed when a student is suspected of using or is actually caught using, possessing, or selling drugs in school or on school property.

SCHOOL BOARD POLICY

Local school boards are requested to adopt and publish a policy governing the use, possession, and sale of drugs by students. This policy statement should:

1. Emphasize the education, health, and welfare of students, instead of punitive action.

2. Provide help for drug-troubled students who seek counseling.

3. Provide for appropriate disciplinary action when drug abuse problems arise.

4. Be legally sound and permit staff members to carry out their responsibilities without fear of repercussions. Policy statements should be reviewed by the school board's attorney and/or commonwealth's attorney before adoption. They should establish clear lines of authority and good responsibility for all members of the school staff.

5. Permit the principal and/or other persons designated by the school board to search a student's locker or desk under the following circumstances:

   a. When the students have been informed in advance that, under school board regulations, desks and lockers may be inspected if facts exist which give the administration reasonable belief that articles and materials exist which would be injurious to pupils.

   b. When facts exist which give the administration reasonable belief that articles and materials exist which are likely to pose a threat to the maintenance of discipline and order in the school.

6. The principal should make provision for controlling the use of parking areas on school property and steps to be taken in prosecuting offenders.

7. Establish procedures with the police and/or juvenile authorities as to when they should be contacted and how drugs which are found should be handled.

8. Provide guidelines for the principal regarding proper procedures for allowing law enforcement officers to question students while they are under the school's authority.

Implementing School Board Policy

Procedures should be set up so that when a member of a school's staff becomes aware of a drug abuse incident he knows the precise steps to be followed. These procedures should become part of a school's written health services policies which should delineate basic rules for handling all emergency health situations, including suspected drug abuse.

All professional personnel at some time may be intimately involved in discovery of the use, possession, or sale of drugs in the school. Suggestions relative to the role of such personnel follow:

Principal

1. The principal's first responsibility in the administration of the school board's policy relative to drug abuse should be to properly review and interpret that policy to both his professional and non-professional staff.

2. He should have a knowledge of drugs and drug abuse.

3. He should keep abreast of all local, State, and federal laws relative to the use, sale, and possession of dangerous drugs.

4. He, or his designated representative, should be notified of all drug-related incidents in the school. He should send to the school nurse any pupil referred to him whose appearance and behavior seem symptomatic of drug abuse. In the absence of a nurse, he should inform the parent that the student is ill and request the parent to come to the school. When the parent arrives at school, he or she should be informed of the problem and requested to remove the student from the school and have him examined by the family physician.

5. If the student is in need of immediate medical attention, the principal should inform the student's parents and make arrangements to transfer the student to a local hospital to be placed under the care of the family physician.

6. He should require any student under medical care and using prescribed medication in school to present to the school nurse, to the principal, or to someone officially designated by him a doctor's order stating the type of medication prescribed for the student, dosage, and duration of treatment.

7. He should designate a staff member to keep accurate and detailed records on all drug incidents (all such information should be treated as being confidential).

8. He should report all drug abuse incidents to the division superintendent of schools, or his designee.

Teacher

1. The teacher should have knowledge of drugs and drug abuse.

2. He should be able to recognize significant changes in appearance and behavior of students. (Material on Pages 1 and 2 of the Department's publication, Drugs and Drug Abuse, will help teachers recognize symptoms of drug abuse.)

3. He should report students showing symptoms of drug abuse to the principal, who in turn may refer them to the nurse.

4. He should be alert to the presence of strangers in the school building or on the school grounds. These incidents should be brought to the immediate attention of the principal.

5. All teachers should properly supervise all areas of the school including rest rooms and locker rooms.

Nurse

1. The nurse should have knowledge of drugs and drug abuse.

2. She should be able to recognize symptoms of drug abuse.

3. She should observe the student referred to her and, having considered the information supplied by the teacher and/or principal, determine whether the pupil is in need of immediate medical attention. If so, she should inform the

principal who is responsible for contacting the student's parents, unless in keeping with school board policy he has delegated responsibilities enumerated under the heading "Principal" to a staff member.

4. She should keep the principal advised of pertinent information about harmful drugs and drug abuse.

5. She should keep accurate and detailed records of all drug incidents. If there is no school nurse, the principal should designate someone on his staff to keep such records.

Guidance Counselor

1. The guidance counselor should become informed about the nature and effects of dangerous drugs and other harmful substances.

2. He should be able to recognize symptoms of drug abuse.

3. When pupil problems associated with drugs are identified, he must keep the principal fully informed and work very closely with appropriate staff members.

Other Professional Staff

1. They should become informed about the nature and effects of dangerous drugs and other harmful substances.

2. They should be able to recognize symptoms of drug abuse.

3. When pupil problems associated with drugs are identified, the principal must be kept fully informed.

4. They should work closely with those staff members to whom the principal has designated responsibility for handling drug problems.

COMMONWEALTH OF VIRGINIA
STATE DEPARTMENT OF EDUCATION
Richmond, Virginia 23216

Appendix IV

PROTOTYPE POLICY AND PROCEDURES FOR DRUG DISCOVERY IN SCHOOLS

Recognizing that the use and abuse of harmful drugs by students has become a local, State, and National problem, the _____ (City/County) School Board adopted the following policy concerning the sale, possession, dispensing, and/or use of drugs on school property and at all school sponsored activities:

SCHOOL RESPONSIBILITY

The schools are responsible for maintaining an environment in which students are protected from drugs and drug related activities. The community rightfully expects the school to exercise this responsibility to prevent drug problems from arising.

The laws regarding the sale, possession, and usage of drugs are clear; and appropriate penalities are provided for violators of these laws. All members of the school community are subject to these laws on the school grounds as well as elsewhere and have the responsibility as citizens to uphold these laws.

As in handling all student health problems, school personnel should be cognizant of the need and responsibility to think in terms of the welfare of the individual student as well as the entire student population. Because of the seriousness of a drug problem, no one staff member should attempt to handle such a problem alone but should follow the same procedure used in the referral or handling of other academic behavioral, emotional, and/or health problems.

PROCEDURES

The principal has the overall responsibility within his school for the disposition of drug related incidents. All referrals of drug use or abuse cases within the school should be made to him or his designated representative. He is responsible for all contacts within the school, between the school and outside agencies, and/or parents concerning drug problems. The principal will make the decision rel-

ative to when the law enforcement officials shall be involved and has the responsibility of informing the parents or legal guardian.

The principal or designated authority in his absence shall immediately remove a student who is discovered using, possessing, or selling drugs on school property. In all cases, the superintendent shall be notified of such action.

The principal has this drug policy as his authority for any appropriate action and shall be guided by the specific steps herein. At the beginning of each school year, all school personnel shall be informed of this policy.

SEARCHING LOCKERS AND DESKS

The principal or designated person in his absence may search a student's locker or desks under the following circumstances:

a. When the student has been informed in advance that under school board regulations desks and lockers may be inspected if the administration has reason to suspect the presence of articles or materials injurious to the best interest of the school.

b. When the principal suspects the presence of drugs or other harmful substances which are likely to pose a threat to the maintenance of discipline and order in the school.

c. When a witness is present.

HANDLING CONTRABAND MATERIAL

Any contraband material is to be turned over immediately to the principal or designated person in his absence who is personally responsible for holding and delivering them to the public authorities.

Such materials should be received in the presence of witnesses and marked for future identification. A receipt with witnesses' signatures should be furnished the owner, if known, and one demanded from the officer who takes possession.

SUPERVISING PARKING AND OTHER AREAS OF THE SCHOOLS

1. Shall request all visitors to register at the office when entering school property, including grounds. Persons who "hang around" with no legitimate reason for their presence shall be requested to report to the principal immediately.

2. Shall supervise all parking areas and school grounds during lunch hours and at other times when students are out of class. Any person found in the areas with no legitimate reason shall be reported to the principal immediately. He shall take appropriate action as indicated under "Discovery of Drug Abuse."

3. Should lock all areas of the school that are seldom used, such as basements and storage areas, to prevent their use of illicit purposes.

LAW ENFORCEMENT AUTHORITIES

The principal should arrange periodic meetings with local law enforcement authorities on drug abuse. Arrangements should be made to cooperate with the local, State, and Federal law enforcement authorities in the detection, prevention, and prosecution of possible violations.

SPECIFIC RESPONSIBILITIES

Superintendent or his Designee

1. Should have a knowledge of drugs, their use and abuse, and drug education.

2. Shall have the responsibility to inform the school board of all activities relating to drug use and abuse.

3. Shall keep the community informed of local school board policies and programs related to drugs and drug abuse.

4. Shall advise the local school board with respect to any appropriate disciplinary action against a student who is guilty of violating any drug law.

5. Shall maintain accurate and confidential records of all drug related matters.

6. Shall meet periodically with his administrative staff to determine the need for updating their drug policy or to discuss new drug related matters.

7. Shall provide in-service education opportunities for all teachers with respect to the harmful effects of drug abuse and drug education.

Principal or his Designee

1. Shall have knowledge of drugs, their use and abuse, and drug education.

2. Shall report all activities relating to drugs to the superintendent.

3. Shall be familiar with sources to which drug problems may be referred.

4. Shall report any law violations concerning drugs to the law enforcement officials after consultation with the superintendent.

5. Shall notify parents or legal guardian when a student's appearance and behavior seem symptomatic of drug usage. In any emergency medical assistance shall be obtained.

6. Shall take appropriate disciplinary action against a student who is guilty of violating any drug law.

7. Shall require all students who take medication at school to have written permission on file stating the type, dosage, and duration of treatment.

8. Shall keep accurate information concerning drug use or abuse in confidential files.

9. Shall assist teachers of health education in including instruction in drugs and drug abuse.

Teacher

1. Shall have knowledge of drugs, their use and abuse, and drug education.

2. Shall be able to recognize any significant changes in appearance and behavior of a student.

3. Shall report to the principal any student showing symptoms of drug abuse who in turn may refer the student for counseling or medical attention.

4. Shall be alert to the presence of strangers in the school building or on the grounds. This information shall be brought to the immmediate attention of the principal.

5. Teachers of health education shall include instruction in drugs and drug abuse.

Student Counseling

Students who have questions concerning drugs should be encouraged to seek the help and counsel of school personnel. School personnel who are approached by students for help on drug problems should follow one or more of the following procedures depending upon the nature of the request:

1. Counsel the student on the need to evaluate and remedy his problem.

2. Encourage the student to discuss his problem with his parents or guardians and inform them that the parents must be notified.

3. Inform the student about community agencies that are available to help with his or her problem after consultation with the principal.

4. Refer the student to the guidance counselor, or other designated staff member who can advise the student about available assistance. (A list of available referral agencies willing to counsel or assist students with drug problems shall be available in the administrative and counselor's offices of each school.)